

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF DELAWARE

3  
4 DASSO INTERNATIONAL, INC. and )  
5 EASOON USA, LLC, )  
6 )  
7 Plaintiffs, )  
8 ) C.A. No. 17-1574-RGA  
9 v. )  
10 )  
11 MOSO NORTH AMERICA, INC., and )  
12 MOSO INTERNATIONAL B.V., )  
13 )  
14 Defendants. )

15 J. Caleb Boggs Courthouse  
16 844 North King Street  
17 Wilmington, Delaware

18 Tuesday, July 2, 2019  
19 3:20 p.m.  
20 Preliminary Injunction Hearing

21 BEFORE: THE HONORABLE RICHARD G. ANDREWS, U.S.D.C.J.

22 APPEARANCES:

23 O'KELLY ERNST & JOYCE, LLC  
24 BY: SEAN T. O'KELLY, ESQUIRE  
25 BY: THOMAS H. KRAMER, ESQUIRE

26 -and-

27 O'ROURKE LAW OFFICE, LLC  
28 BY: GERARD M. O'ROURKE, ESQUIRE

29 For the Plaintiffs

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1 APPEARANCES CONTINUED:

2 POTTER ANDERSON & CORROON, LLP  
3 BY: DAVID E. MOORE, ESQUIRE  
3 BY: BINDU A. PALAPURA, ESQUIRE

4 -and-

5 AKERMAN, LLP  
6 BY: THOMAS PASTERNAK, ESQUIRE  
6 BY: EVELINA GENTRY, ESQUIRE  
7 BY: JOHN M. SCHAFER, ESQUIRE

7 For the Defendants

8 Also Present:

9 Mr. Avery Chua  
10 Mr. Rene Zaal  
11 Mr. Brett Kelly  
11 Mr. Felix Bock  
12 Mr. Rubin Shmulsky  
12 Mr. Mark Clifton  
13 Mr. Arjan van der Vegte

13 \*\*\* PROCEEDINGS \*\*\*

03:20:45 14

03:20:45 15 COURT CLERK: All rise.

03:20:54 16 THE COURT: All right. Good afternoon,  
03:20:55 17 everyone. Please be seated. This is the preliminary  
03:21:00 18 injunction hearing in Dasso International versus MOSO North  
03:21:07 19 America. Civil Action Number 17-1574.

03:21:12 20 Mr. O'Rourke, good afternoon. Can you tell me  
03:21:14 21 who else you have here with you?

03:21:15 22 MR. O'ROURKE: Good afternoon, Your Honor.

03:21:17 23 Gerry O'Rourke from the O'Rourke Law Office on behalf of the  
03:21:20 24 plaintiffs. With me is Mr. Scott Hoopes from the Mills &  
03:21:24 25 Hoopes Law Firm, also on behalf of the plaintiffs. At the

03:21:26 1 end of the table is Mr. Sean O'Kelly from the O'Kelly &  
03:21:30 2 Ernst firm on behalf of the plaintiffs. Behind him is  
03:21:32 3 Mr. Tom Kramer, also of the O'Kelly & Ernst firm.

03:21:36 4 And Judge, I would like to introduce you to our  
03:21:39 5 two witnesses. First is Mr. Avery Chua. He is the  
03:21:42 6 president and CEO of the plaintiff, Easoon.

03:21:46 7 And next to him is Dr. Rubin Shmulsky. He is  
03:21:49 8 the president and head of the department of sustainable  
03:21:52 9 bioproducts at Mississippi State University. He is the  
03:21:55 10 expert that provided the declaration in support of our  
03:21:58 11 preliminary injunction motion.

03:21:59 12 THE COURT: All right. Thank you, Mr. O'Rourke.

03:22:02 13 Good afternoon, Mr. Moore.

03:22:03 14 MR. MOORE: Good afternoon, Your Honor. David  
03:22:05 15 Moore and Bindu Palapura on behalf of defendants. With us  
03:22:08 16 today from the Akerman Firm are Tom Pasternak, Eve Gentry,  
03:22:13 17 and Jay Schafer.

03:22:15 18 And in the next row, we have our witnesses. We  
03:22:18 19 have Felix Bock, Rene Zaal, and Brett Kelly. And then also  
03:22:25 20 joining us are Mark Clifton and Arjan van der Vegte.

03:22:30 21 THE COURT: Okay. So first off, I'm sorry that  
03:22:35 22 the scheduling has caused you all to have to wait around for  
03:22:45 23 a long time.

03:22:47 24 Here's what I propose to do. I think what we  
03:22:53 25 ought to do is have your fact witnesses who are here testify

03:22:59 1 to whatever you want to have them testify to. I think your  
03:23:02 2 two experts ought to testify at another occasion after  
03:23:09 3 they've finished submitting reports or being deposed, or the  
03:23:15 4 briefing on striking the reports is all done. It seems kind  
03:23:18 5 of silly to have the hearing in the middle of all that.

03:23:23 6 And so that's what I propose. I'm guessing  
03:23:30 7 these fact witnesses are something that can probably be done  
03:23:34 8 without too much more time or that won't take that long.

03:23:38 9 Mr. O'Rourke, any comment?

03:23:39 10 MR. O'ROURKE: Yes, Your Honor. We did want to  
03:23:41 11 talk to you about how you wanted to handle Mr. Bock's  
03:23:45 12 declarations, both the original one, our challenge to it,  
03:23:48 13 and the supplemental. With all due respect, sending us out  
03:23:53 14 after this hearing without any guidance would be  
03:23:55 15 problematic.

03:23:56 16 THE COURT: Well, I would let him submit a new  
03:23:59 17 report. I mean, the claim construction I gave is not the  
03:24:02 18 one the defendants were asking for, and so, you know, maybe  
03:24:08 19 a new claim construction means they concede. Maybe it  
03:24:12 20 doesn't.

03:24:13 21 But as I gather, if Mr. Bock has already  
03:24:18 22 submitted something or wants to submit something, and so I  
03:24:22 23 think he ought to submit it. You can do whatever it is you  
03:24:24 24 did in the first place. You can file a reply, but basically  
03:24:28 25 to flesh out both from the instance for him and in the

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03:24:35 1 second instance for everybody what the issues are about  
03:24:38 2 whatever his new submission is.

03:24:41 3 MR. O'ROURKE: Okay. Thank you, Your Honor.

03:24:42 4 Okay. Any comment from the defendants?

03:24:44 5 MR. PASTERNAK: No, Your Honor. That's  
03:24:46 6 acceptable to us.

03:24:47 7 THE COURT: Okay. All right. Well,  
03:24:50 8 Mr. O'Rourke, you've got -- is it Mr Chua?

03:24:54 9 MR. O'ROURKE: Yes, Your Honor. Mr. Chua will  
03:24:56 10 testify first, and his examination will be handled by  
03:25:00 11 Mr. Scott Hoopes.

03:25:00 12 THE COURT: Okay. Mr. Chua, come on forward.

03:25:28 13 COURT CLERK: Do you want to swear or affirm?

03:25:30 14 THE WITNESS: Yeah.

03:25:31 15 COURT CLERK: Can you please state and spell  
03:25:33 16 your full name for the record?

03:25:34 17 THE WITNESS: My name is Seng Chee Chua spelled  
03:25:37 18 S-E-N-G C-H-E-E C-H-U-A.

03:25:41 19 COURT CLERK: Please place your left hand on the  
03:25:44 20 Bible and raise your right hand.

03:25:44 21 Seng Chee Chua, after having been duly sworn  
03:25:44 22 under oath, was examined and testified as follows:

03:25:44 23 DIRECT EXAMINATION

03:26:03 24 BY MR. HOOPES:

03:26:03 25 Q. Mr. Chua, can you give your full legal name to the

Chua - Direct

03:26:17 1 Court, please?

03:26:17 2 A. Yes. My name is Seng Chee Chua which is spelled

03:26:22 3 S-E-N-G C-H-E-E C-H-U-A.

03:26:27 4 Q. And do you also go by Avery?

03:26:30 5 A. Yes, I do go by Avery.

03:26:32 6 Q. Can you just briefly tell the Court what your

03:26:37 7 background is before you came to the U.S.?

03:26:40 8 A. Okay. I have a bachelor's degree in forestry, and I  
03:26:47 9 worked for a company that's called Hangzhou Dasuo Technology  
03:26:52 10 in China prior to coming to U.S. And I moved to U.S. in  
03:26:56 11 2008. And at that time, I established a company called  
03:27:03 12 Easoon, U.S.A., and I am here ever since with traveling back  
03:27:08 13 and forth.

03:27:12 14 Q. So the company that you worked for in China --

03:27:16 15 A. Yes.

03:27:16 16 Q. -- are there initials or anything that is easier to  
03:27:25 17 refer to them by or that you have referred to them by?

03:27:27 18 A. The company right now is HDT, but at the time it  
03:27:34 19 was -- I need to clarify a bit. The company that I worked  
03:27:38 20 for in way back; right?

03:27:39 21 Q. Correct.

03:27:39 22 A. Yeah, is called DIG.

03:27:41 23 Q. And what's the pronunciation of the company? How do  
03:27:46 24 you say that?

03:27:51 25 A. Hangzhou Dasuo Industrial Group.

Chua - Direct

03:27:51 1 Q. Okay. So if we refer to it just as DIG, then we'd  
03:27:58 2 have an understanding of what that means?

03:28:00 3 A. Yes.

03:28:00 4 Q. Okay. And so when you came over to the U.S. in 2008  
03:28:06 5 to start Easoon, did you stop working for DIG at the time?

03:28:11 6 A. No, at that time, I wanted to resign, do my own  
03:28:15 7 thing, but the company tries to retain me and told me to  
03:28:18 8 just continue on and help them with the daily stuff. So I  
03:28:22 9 did, and I continued to do that job until 2011.

03:28:30 10 Q. Okay. Then in 2011, did you cease working with or  
03:28:34 11 for DIG?

03:28:35 12 A. Yes. After 2011, I'm on my own, and Easoon is my  
03:28:41 13 only so-called job for that and some of the Easoon Group's  
03:28:48 14 companies.

03:28:50 15 Q. For purposes of this case, are you familiar with the  
03:28:55 16 patents that are or, I guess, have been referenced in this  
03:28:59 17 case?

03:28:59 18 A. Yes, I am.

03:29:01 19 Q. How many patents, is it your understanding, that are  
03:29:04 20 in this case related to the patented product?

03:29:07 21 A. The patent that this discusses specifically is a  
03:29:12 22 patent involving a memo scrambler which is the '578, and  
03:29:17 23 there's a counterpart of that patent in China, and I believe  
03:29:20 24 the number ends with '764.

03:29:26 25 Q. Okay. So was the Chinese patent, the '764 patent,

Chua - Direct

03:29:32 1 filed first, or was the U.S. patent filed first?

03:29:36 2 A. As I remember, it's -- the Chinese patent was filed  
03:29:39 3 first, '764.

03:29:43 4 Q. And do you recall when that patent was filed?

03:29:45 5 A. I believe it's sometime in 2008.

03:29:52 6 Q. And that was the same year you came over from Easoon?

03:29:56 7 A. Yes.

03:29:57 8 Q. And then do you recall when the '578 patent was filed  
03:30:01 9 in the U.S.?

03:30:02 10 A. '578, I remember when it was granted. I believe it's  
03:30:11 11 2014.

03:30:18 12 Q. And can you explain to the Court what the name means?  
03:30:23 13 What that is, Dasso? What that is?

03:30:26 14 A. As I said earlier, I work for that Hangzhou Dasuo and  
03:30:31 15 subsequently the company changed its name to Dasso. And it  
03:30:34 16 is actually an acronym mix-up from Dazhuang and then moso  
03:30:42 17 bamboo. So it becomes Dazhuang Superior Bamboo, and so it's  
03:30:47 18 D-A-S-S-O. That subsequently becomes a brand -- just a  
03:30:49 19 brand name.

03:30:50 20 Q. Okay. And what do you mean by Dasso has become a  
03:30:55 21 brand name? Can you explain that?

03:30:56 22 A. Well, it's being used as a logo form. So that  
03:31:06 23 logo -- so that it's being recognized. So that's how it is  
03:31:10 24 brand. There's no really company associated with it at the  
03:31:14 25 time.

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03:31:15 1 Q. And is that logo a U.S. type of a brand, or is it a  
03:31:19 2 global brand?

03:31:20 3 A. It's a global brand. It all starts with China, and  
03:31:25 4 then subsequently they started to use that brand to sell  
03:31:29 5 stuff overseas. And then that's the same brand that I'm  
03:31:33 6 using right now.

03:31:35 7 Q. Do you have any specific rights to use the name  
03:31:41 8 Dasso, any branding right?

03:31:42 9 A. Yes, I do. I have a licensing agreement that -- to  
03:31:45 10 use that brand in U.S., So I'm the exclusive licensor.

03:31:52 11 Q. And do you recall when you received or obtained that  
03:31:55 12 license -- those licensing rights for the Dasso brand?

03:31:58 13 A. It happened quite some time ago. I would believe  
03:32:03 14 it's sometime around 2011 or around there.

03:32:10 15 Q. And as far as distribution rights to distribute the  
03:32:14 16 patented product --

03:32:15 17 A. Yeah.

03:32:16 18 Q. -- do you have any specific contractual distribution  
03:32:19 19 rights to distribute the product into the U.S.?

03:32:22 20 A. Yes, I do. Initially, I was selling the product, the  
03:32:31 21 Dasso brand, and then I have a contract, also meaning Easoon  
03:32:35 22 has a contract as an exclusive distributor for the '764  
03:32:41 23 patent, the Dasso. And subsequently when the U.S. patent  
03:32:51 24 was granted, then I was given another contract.

03:32:57 25 Q. And who were you given the other contract from?

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03:32:59 1 A. And this contract was signed between Easoon and Dasso  
03:33:13 2 International.

03:33:13 3 Q. I'm going to hand you what's going to be marked as  
03:33:24 4 Plaintiff's Exhibit 1.

03:33:54 5 MR. HOOPES: May I approach the witness, Your  
03:33:55 6 Honor?

03:33:56 7 THE COURT: Sure.

03:33:57 8 BY MR. HOOPES:

03:33:57 9 Q. Now, do you recognize those agreements?

03:34:03 10 A. Yes.

03:34:07 11 Q. And what are those agreements? What do those  
03:34:11 12 agreements represent?

03:34:12 13 A. It's the exclusive licensing and distribution  
03:34:15 14 agreement that is between the DIG and Easoon, and this is  
03:34:23 15 for the '764.

03:34:27 16 Q. Okay. If you turn to the Bates label at the bottom.  
03:34:32 17 EASOON 54237.

03:34:37 18 A. Yes, I have it.

03:34:39 19 Q. Okay. Could you tell the Court what this is?

03:34:45 20 A. It reads "Exclusive License and Distribution  
03:34:50 21 Agreement," and this is between DIG and Easoon, but the  
03:34:56 22 date -- this is dated April 2014. And the earlier one dated  
03:35:04 23 September 2010, and this is still about the '764 patent.

03:35:14 24 Q. And at the top of this distribution agreement is the  
03:35:20 25 Dasso Industrial Group Company Limited. Is that DIG?

Chua - Direct

03:35:25 1 A. Yes, that's DIG.

03:35:26 2 Q. And then if you turn to Easoon 54242.

03:35:30 3 A. Yes. Yes, I have it.

03:35:34 4 Q. Can you tell the Court what that represents?

03:35:36 5 A. Yes, this is an Amendment to the Exclusive License  
03:35:39 6 and Distribution Agreement, and it's signed between Hangzhou  
03:35:48 7 Dasuo Technology and Easoon. And it's dated January 2015,  
03:35:54 8 January 15th.

03:35:56 9 Q. Okay. And so this is with a different company I  
03:36:00 10 think that was referred to in the litigation as HDT; is that  
03:36:04 11 correct?

03:36:04 12 A. Yes, that's correct.

03:36:06 13 Q. And can you tell the Court what the difference is  
03:36:08 14 between DIG and HDT and why it changed?

03:36:13 15 A. Okay. DIG initially is the patentholder of the '764.  
03:36:22 16 And subsequently, there's a change in ownership of the  
03:36:26 17 patent, and that was transferred to a company called New  
03:36:31 18 Bamboo. And then New Bamboo granted HDT the only exclusive  
03:36:36 19 right to distribute that or to sell the product from China.

03:36:45 20 Q. And are you given a specific territory throughout  
03:36:48 21 these exclusive distribution agreements?

03:36:50 22 A. Yes, I was. My territory, North America, meaning  
03:36:55 23 United States, and Canada, and including Mexico.

03:37:01 24 Q. And if you could turn to 54251 or 54252?

03:37:07 25 A. 252. Yes.

Chua - Direct

03:37:16 1 Q. And it's in Chinese, but can you tell the Court what  
03:37:21 2 that document is?

03:37:22 3 A. Okay. This document is about licensing meaning to  
03:37:30 4 use the logo Dasso.

03:37:32 5 Q. So is that the Dasso licensing agreement that you  
03:37:35 6 referenced before?

03:37:36 7 A. Yes. That's the licensing agreement that I'm talking  
03:37:40 8 about.

03:37:40 9 Q. Turn quickly to 54247.

03:37:44 10 A. 47. 54247, yes.

03:37:51 11 Q. And what is this agreement? Who is the agreement  
03:37:56 12 between?

03:37:56 13 A. This is an agreement between Dasso International and  
03:38:06 14 Easoon.

03:38:07 15 Q. And who is Dasso International?

03:38:09 16 A. Dasso International is the patentholder of '578, and  
03:38:17 17 it's a registered company in New York.

03:38:19 18 Q. And at the time of this agreement, August 3rd, 2017,  
03:38:25 19 did Dasso International, Inc. hold the patent licensing  
03:38:29 20 agreements to the '578 patent in the U.S.?

03:38:33 21 A. I'm sorry. Can you repeat that?

03:38:34 22 Q. Yeah. At the time that this agreement was entered  
03:38:36 23 into, August 3rd, 2017, did Dasso International have the  
03:38:44 24 patent ownership patent right to the '578 patent in the  
03:38:47 25 U.S.?

Chua - Direct

03:38:48 1 A. Yes, they do, and that's the reason why we signed the  
03:38:51 2 contract.

03:38:53 3 Q. During this time, 2017, when you signed the contract  
03:38:56 4 with Dasso International, did you have more than one  
03:39:00 5 distribution agreement, one with Dasso International and one  
03:39:03 6 with HDT?

03:39:04 7 A. Yes, I did. That's just because there's two patents  
03:39:07 8 involved.

03:39:08 9 Q. Okay. And so if you are selling the patented product  
03:39:12 10 inside the U.S., who would you have to have a contract with  
03:39:15 11 at the time?

03:39:15 12 A. I would have to have a contract with Dasso  
03:39:19 13 International because they had the patentholder of these  
03:39:22 14 patents, and it's protected by that patent number.

03:39:26 15 Q. And if you were selling the patented product outside  
03:39:29 16 of the U.S. at the time in August 2017, would you have a  
03:39:34 17 separate contract with a different company?

03:39:35 18 A. Yes. And that is the HDT contract, and that is  
03:39:41 19 regarding the patent '764.

03:39:44 20 Q. Now, these collection of distribution agreements that  
03:39:47 21 I gave you --

03:39:49 22 A. Yeah.

03:39:52 23 Q. -- are there original documents to these agreements?

03:39:56 24 A. Yes, there's originals. Yes.

03:39:58 25 Q. And what are those original documents?

Chua - Direct

03:40:01 1 A. It's the copy meaning this is a copy of that  
03:40:07 2 original.

03:40:08 3 Q. All right. And is the original document written in  
03:40:12 4 English?

03:40:12 5 A. Yeah, usually when China sets up the contract, they  
03:40:16 6 always start it with Chinese. And if the readers do not  
03:40:21 7 understand Chinese, then they have an English version  
03:40:24 8 because English then is the most common and international  
03:40:27 9 language.

03:40:29 10 Q. These agreements that are in English, are these  
03:40:32 11 agreements that were signed at the time, the Chinese  
03:40:34 12 documents, or were these signed later?

03:40:36 13 A. Some are. Well, it depends. If the -- the Chinese,  
03:40:47 14 obviously, is signed as an originer. And then if it's  
03:40:52 15 necessary for the contract to be in English, then a copy  
03:40:56 16 would be supplemented later on.

03:40:59 17 Q. The English version of the documents, were these  
03:41:02 18 signed at the time of the Chinese documents or signed later?

03:41:04 19 A. They are signed later.

03:41:06 20 Q. And who requested the documents be duplicated into  
03:41:11 21 English?

03:41:11 22 A. Well, the HDT part initiated the English one just  
03:41:17 23 because when they file the review of the contract, and they  
03:41:18 24 want everything to have filing that they can use, especially  
03:41:22 25 when importers dealing, you know, in English as a medium.

Chua - Direct

03:41:28 1 Q. And have you seen the documents, the patent  
03:41:37 2 distribution agreements with MOSO in this case?

03:41:40 3 A. Yes, I have.

03:41:41 4 Q. And those documents, were those in just one language,  
03:41:46 5 English or Chinese, or two different languages?

03:41:49 6 A. No, they are in two languages, and that is just  
03:41:53 7 because the customer reading the Chinese version. The  
03:41:56 8 Chinese and English is supplied at the same time so that  
03:42:00 9 they can understand it and sign it.

03:42:18 10 Q. Are you familiar with a company called TW Flooring  
03:42:21 11 Group?

03:42:21 12 A. Yes, I do.

03:42:22 13 Q. And is there also a company called Disdero Wood?

03:42:26 14 A. Yes, I do.

03:42:27 15 Q. Can you explain to the Court what TW Flooring Group  
03:42:30 16 is?

03:42:31 17 A. Well --

03:42:32 18 MR. PASTERNAK: Objection, it's outside the  
03:42:35 19 scope of his declaration.

03:42:36 20 THE COURT: Well, his declaration wasn't an  
03:42:38 21 expert declaration, I guess, so I'm not sure that's a good  
03:42:43 22 objection.

03:42:46 23 THE WITNESS: Well, should I answer that?

03:42:47 24 THE COURT: Yes.

03:42:48 25 THE WITNESS: TW Flooring Group is a joint

Chua - Direct

03:42:52 1 venture between Easoon Group Company and a company called  
03:42:52 2 Dasso Wood.

03:42:56 3 BY MR. HOOPES:

03:42:56 4 Q. And so can you explain a little bit more what was  
03:43:00 5 Easoon's role in TW Flooring Company?

03:43:02 6 A. Well, Easoon's -- Easoon has a huge amount of  
03:43:07 7 flooring inventory. So Easoon is in the business of  
03:43:10 8 distributing wood flooring. Easoon has a bunch of bamboo  
03:43:15 9 flooring products as well, and then later on we get  
03:43:21 10 bringing -- with the time, we started to bring in this  
03:43:25 11 product called DassoXTR.

03:43:27 12 So we have a few divisions. We have a division  
03:43:29 13 that is importing the material. We have a division that we  
03:43:33 14 try to create to warehouse material and cater out of the  
03:43:38 15 warehouse. And then we have these specific brand names to  
03:43:46 16 DassoXTR to distribute the exterior group of products.

03:43:50 17 Q. And what services did TW Flooring Group provide?

03:43:53 18 A. TW Flooring -- TW provides like the -- this TW  
03:44:00 19 Flooring acts as a joint venture, and the Dasso helps in  
03:44:05 20 providing the product and providing the understanding of  
03:44:10 21 local market.

03:44:12 22 Q. And do you recall when TW Flooring Group started?

03:44:15 23 A. TW Flooring Group started sometime in 2011 after I  
03:44:20 24 have resigned from my previous engagement with the Chinese  
03:44:25 25 company, DIG.

Chua - Direct

03:44:27 1 Q. And was there ever a point subsequent in 2011 that  
03:44:34 2 you were looking to grow or expand the DassoXTR brand?

03:44:39 3 A. Yes, that has always been the idea, and that's where  
03:44:44 4 I find these Dasso Wood to be helpful to bringing in that  
03:44:50 5 local knowledge.

03:44:51 6 Q. And did you ever look to hire anybody to oversee the  
03:44:55 7 XTR division of Easoon?

03:44:58 8 A. Yes, I did. I mean, we have been always trying to  
03:45:01 9 look for talent to head up the DassoXTR part of the  
03:45:07 10 business. So in 2013, we hired Brett Kelly as the president  
03:45:14 11 of the Easoon DassoXTR division.

03:45:19 12 Q. And is that the Brett Kelly that's a defendant in  
03:45:22 13 this lawsuit?

03:45:22 14 A. Yes.

03:45:41 15 Q. I'm going to hand you what I'm marking as P2.

03:45:45 16 MR. HOOPES: May I approach the witness, Your  
03:45:48 17 Honor?

03:45:48 18 THE COURT: Yeah.

03:45:50 19 BY MR. HOOPES:

03:45:50 20 Q. Can you look through P2 and tell me what P2 pertains  
03:46:04 21 to?

03:46:04 22 A. P2 is a contract -- employment contract of work to  
03:46:11 23 Brett Kelly which he signed.

03:46:16 24 Q. And are there any other agreements throughout P2?

03:46:19 25 A. No, I don't believe so. I think this is the only

Chua - Direct

03:46:23 1 agreement that we signed, and he's hired.

03:46:27 2 Q. If you look at what's Bates labeled at the bottom

03:46:31 3 EASOON 1922 --

03:46:32 4 A. Yes.

03:46:40 5 Q. -- can you tell the Court what this 1922 represents?

03:46:45 6 A. Yeah. This document is the employment contract for

03:46:50 7 Mark Clifton.

03:46:51 8 Q. And is Mark Clifton one of the defendants in this

03:46:53 9 case?

03:46:54 10 A. Yes, he is.

03:46:56 11 MR. PASTERNAK: Objection, Your Honor. He's not  
03:46:57 12 a defendant in this case.

03:46:58 13 THE COURT: Yeah, I'm kind of wondering that

03:47:02 14 myself. Isn't he a defendant in the case that's been joined  
03:47:06 15 in this case?

03:47:08 16 MR. HOOPES: Yes.

03:47:10 17 THE COURT: Right. So he's not actually a  
03:47:12 18 defendant in this case.

03:47:14 19 MR. HOOPES: Didn't we consolidate it?

03:47:16 20 THE COURT: Well, I think we consolidated it,  
03:47:18 21 but it doesn't seem that the motion that you filed in this  
03:47:21 22 case is now a motion that you filed in that case.

03:47:24 23 MR. HOOPES: Okay.

03:47:24 24 THE COURT: Right?

03:47:25 25 MR. HOOPES: Yeah, okay. I'll strike that, Your

Chua - Direct

03:47:27 1 Honor. Correct.

03:47:28 2 BY MR. HOOPES:

03:47:28 3 Q. So Mark Clifton, you were saying this represents an  
03:47:33 4 employment agreement?

03:47:34 5 A. Yes.

03:47:35 6 Q. And then if you look at 1924 --

03:47:40 7 A. Yes.

03:47:41 8 Q. -- can you tell the Court what that represents?

03:47:43 9 A. This is the employment contract for Steve Osterman.

03:47:48 10 Q. Okay. If you go back to the first page of P2 --

03:47:52 11 A. Yes.

03:48:02 12 Q. -- can you tell the Court what the agreement says is  
03:48:05 13 the start date for Mr. Kelly?

03:48:07 14 A. It's mentioned here, Monday, June 3rd, 2013.

03:48:12 15 Q. And under the supervisor who Brett Kelly reported to,  
03:48:17 16 can you tell the Court --

03:48:19 17 A. Yeah.

03:48:19 18 Q. -- who the supervisors were?

03:48:20 19 A. Yeah. He's employed from the time and the supervisor  
03:48:23 20 is Avery and Jop together.

03:48:26 21 Q. And who is Jop?

03:48:28 22 A. Jop is the William Jopling, and he's the owner of  
03:48:32 23 Dasso Wood.

03:48:34 24 Q. And was Jop with Dasso Wood? Is that part of the TW  
03:48:41 25 Flooring Group venture?

Chua - Direct

03:48:42 1 A. It is.

03:48:42 2 Q. Would that explain why Avery and Jop are both listed  
03:48:45 3 there?

03:48:45 4 A. Yes.

03:48:46 5 Q. Okay. Can you tell the Court under the working teams  
03:48:50 6 you interact with, can you just tell the Court with Brett  
03:48:53 7 Kelly, who he was supposed to interact with?

03:48:56 8 A. Yeah, over here Brett is supposed to be interacting  
03:48:59 9 with the inside sales and customer service team. That  
03:49:03 10 includes Andy Gallo, Vicki, Isabel, Sonja, Jenny.

03:49:09 11 And then on the technical team, there's, Rick.

03:49:15 12 There's me, Avery, Steve. And marketing team, there's Andy,  
03:49:20 13 Amy, then Jop. Import team, Isabel, Grace, Jenny.

03:49:26 14 Accounting team, Maria and Rachel.

03:49:28 15 Q. Okay. And so was Mr. Kelly's position or role as  
03:49:34 16 president of DassoXTR, was that limited to just sales?

03:49:38 17 A. No, he's not. Brett Kelly is actually hired in order  
03:49:42 18 to head up the sales and is the whole setup of the whole  
03:49:47 19 team of DassoXTR.

03:49:49 20 Q. And on the first page of his contract, there's a  
03:49:54 21 section that says what is major responsibilities will  
03:49:58 22 include. Do you see that?

03:49:58 23 A. Yes.

03:50:00 24 Q. And what were the major responsibilities as president  
03:50:03 25 of DassoXTR?

Chua - Direct

03:50:05 1 A. Well, other than sales, then the next part is setup  
03:50:08 2 and manage of independent outside rep network. Develop the  
03:50:13 3 North American authorized dealer network. That is being  
03:50:18 4 included setup in buying of cooperatives and franchises,  
03:50:22 5 establish authorized dealer programs for installed stores,  
03:50:27 6 sales, and develop private label program when it's  
03:50:31 7 appropriate.

03:50:33 8 Q. At the time that you hired Mr. Kelly, did you look at  
03:50:36 9 him as just an outside sales guy?

03:50:38 10 A. No. No.

03:50:44 11 Q. Does this agreement reference or reflect certain  
03:50:50 12 authorized outside work that was not XTR related?

03:50:54 13 A. Some part, but then you need to get approval. It's  
03:50:58 14 basically to expand the DassoXTR group. And then if there's  
03:51:04 15 any leads that involve other products, then he should bring  
03:51:07 16 back to the non-XTR group.

03:51:10 17 Q. And on the second page, there's a bullet section that  
03:51:20 18 says authorized non-XTR work at the very top. Do you see  
03:51:23 19 that?

03:51:23 20 A. Yes.

03:51:24 21 Q. And then below it, it says, "In all cases, the above  
03:51:28 22 non-XTR work shall be handled as follows." Do you see that?

03:51:31 23 A. Yes.

03:51:32 24 Q. Under Paragraph 1, was there a preauthorization  
03:51:36 25 requirement if Mr. Kelly went and embarked on any projects

Chua - Direct

03:51:42 1 that were non-XTR type of work?

03:51:44 2 A. I'm sorry. Can I have you repeat that?

03:51:47 3 Q. Sure. Who was Mr. Kelly required to obtain approval  
03:51:52 4 from for non-XTR type of work?

03:51:55 5 A. That would be me, Avery.

03:51:59 6 Q. Okay. Would he have to obtain approval from Jop?

03:52:02 7 A. Either one. Either or.

03:52:05 8 Q. Okay. And under Paragraph 3 on the second page --

03:52:11 9 A. Yeah.

03:52:12 10 Q. -- if there are sales of non-XTR Dasso products, do  
03:52:17 11 you see 3a?

03:52:19 12 A. 3a?

03:52:20 13 Q. The second page.

03:52:24 14 A. Twenty-two? Sorry. I'm not able to --

03:52:29 15 Q. 1920.

03:52:31 16 A. 1920. Yes.

03:52:33 17 Q. Okay. There's a sub Paragraph 3 at the top.

03:52:38 18 A. Okay. Yes, I see it now.

03:52:41 19 Q. Okay. And was there a reservation of rights  
03:52:44 20 contained in this agreement for Mr. Kelly to follow?

03:52:48 21 A. Yes. It's written here.

03:52:50 22 Q. Okay. And what does it say?

03:52:51 23 A. It says, Dasso reserves the right to finance, or buy,  
03:52:56 24 or resell or not to, and at its sole discretion based on all  
03:53:02 25 of the alternatives presented.

Chua - Direct

03:53:05 1 Q. Was your expectation that if there was any business  
03:53:08 2 opportunities, that Mr. Kelly would bring them to you?

03:53:11 3 A. Definitely. He should be.

03:53:17 4 Q. And do you know who prepared this agreement?

03:53:21 5 A. Me and Mr. Jopling. I mean, he writes it, but  
03:53:27 6 basically we -- my discussion and my input.

03:53:31 7 Q. Can you look at the third page?

03:53:33 8 A. Yes.

03:53:33 9 Q. And under the signature --

03:53:36 10 A. Yes.

03:53:37 11 Q. -- it says Avery or Jop?

03:53:38 12 A. Yes.

03:53:39 13 Q. Whose signature is that?

03:53:41 14 A. That is Jop's signature.

03:53:42 15 Q. And is there another signature on there?

03:53:45 16 A. No.

03:53:47 17 Q. Is there a signature?

03:53:48 18 A. I mean, yeah, below that, there's Brett Kelly.

03:53:52 19 Q. And are you familiar with Brett Kelly's signature?

03:53:54 20 A. Yes.

03:54:01 21 Q. And can you look at the other two agreements --

03:54:04 22 A. Yeah.

03:54:04 23 Q. -- that are in this? Are these agreements that are  
03:54:07 24 kept in the ordinary course and part of Easoon's business  
03:54:10 25 records?

Chua - Direct

03:54:11 1 A. Yes, it is. It follows our business record.

03:54:14 2 Q. And let me refer you back real quick to P1, the  
03:54:19 3 license and distribution agreement.

03:54:20 4 A. Yes.

03:54:25 5 Q. Are these documents kept in the ordinary course of  
03:54:30 6 business records of Easoon?

03:54:32 7 A. Yes, it is.

03:54:40 8 Q. These exclusive licenses and distribution agreements  
03:54:43 9 with the various entities and patents, do you have a copy in  
03:54:48 10 Chinese?

03:54:48 11 A. Yes, I do.

03:54:53 12 Q. And does HDT and DIG, do they maintain copies of the  
03:54:58 13 Chinese documents as well?

03:54:59 14 A. I believe they do.

03:55:02 15 MR. HOOPES: Your Honor, I'd like to tender P1  
03:55:04 16 and P2.

03:55:06 17 THE COURT: All right. Admitted.

03:55:08 18 (Plaintiff's Exhibit Nos. P1 and P2 were  
03:55:18 19 admitted into evidence.)

03:55:18 20 THE COURT: Mr. Hoopes, how much longer do you  
03:55:20 21 expect the direct examination here to be?

03:55:23 22 MR. HOOPES: I could make it a lot quicker.

03:55:27 23 THE COURT: Well, I don't know what you're  
03:55:29 24 trying to do, that's the reason I ask. It occurred maybe I  
03:55:32 25 should have asked before we started this. I mean, I'm not

Chua - Direct

03:55:38 1 sure, but I have a feeling most of what's just happened we  
03:55:41 2 didn't need to do at all. But I don't know, maybe I'm not  
03:55:46 3 correct in my understanding of what's going on here.

03:55:49 4 I mean, I expected -- well, I expected something  
03:55:56 5 different. So let's get to whatever the point is that you  
03:55:58 6 really want to make here.

03:56:00 7 MR. HOOPES: Okay.

03:56:01 8 BY MR. HOOPES:

03:56:01 9 Q. Was Mr. Kelly authorized to sign contracts on behalf  
03:56:12 10 of DassoXTR Easoon?

03:56:16 11 A. Yes. He is the president of Easoon DassoXTR  
03:56:21 12 division. So as a president, he is authorized to sign.

03:56:42 13 MR. HOOPES: I'll mark this as P3.

03:56:59 14 BY MR. HOOPES:

03:56:59 15 Q. And are you familiar with the document that's been  
03:57:09 16 handed to you as Plaintiff's 3, P3?

03:57:12 17 A. Yes.

03:57:13 18 Q. And can you tell the Court what this reflects?

03:57:17 19 A. Well, this reflects an agreement between Timber  
03:57:22 20 Holdings and Dasso regarding a fastener.

03:57:28 21 Q. Can you look at the last page of the agreement?

03:57:31 22 A. Yes.

03:57:33 23 Q. Or the third page?

03:57:33 24 A. I have it.

03:57:34 25 Q. Of what's EASOON 824?

Chua - Direct

03:57:37 1 A. Yeah, I have it now. "Standardized Outsourcing  
03:57:39 2 Agreement."

03:57:40 3 Q. And can you tell the Court what this document is?

03:57:44 4 A. Well, this document is basically an agreement between  
03:57:48 5 two corporations, Dasso's side and Timber Holdings regarding  
03:57:53 6 a type of fastener.

03:57:56 7 Q. And the document on the third page, the last page --

03:58:01 8 A. Mm-hmm.

03:58:01 9 Q. -- it's titled "Standard Outsourcing Agreement." Is  
03:58:05 10 that a contract between Easoon due to the XTR Dasso  
03:58:12 11 division, and I guess, Timber Holdings, USA, LLC?

03:58:16 12 A. Yes, it is.

03:58:17 13 Q. Do you recognize the signature at the bottom?

03:58:19 14 A. Yes, the bottom signature is Brett Kelly's signature.

03:58:28 15 MR. HOOPES: Your Honor, I'll tender P3.

03:58:30 16 THE COURT: All right. Admitted.

03:58:30 17 (Plaintiff's Exhibit P3 was admitted into  
03:58:30 18 evidence.)

03:58:39 19 BY MR. HOOPES:

03:58:39 20 Q. And at what point did Mr. Kelly resign from Easoon  
03:58:48 21 and DassoXTR?

03:58:49 22 A. Brett Kelly resigned sometime in the month of  
03:58:54 23 June 2017.

03:58:56 24 Q. And after Mr. Kelly resigned and left, did you have  
03:59:03 25 the opportunity to look through the email server for

Chua - Direct

03:59:09 1 documents pertaining to Mr. Kelly?

03:59:11 2 A. Yes, I have.

03:59:13 3 Q. Okay. Did you uncover documents concerning Mr. Kelly  
03:59:17 4 communicating directly with MOSO?

03:59:20 5 A. Yes, I have, and quite a number of them. But not --  
03:59:24 6 they are not all found just in one instance, but rather a  
03:59:29 7 constant visit to the server and constantly applying and  
03:59:33 8 finding more and more email.

03:59:36 9 Q. And were these documents found in the deleted folder  
03:59:41 10 in the server?

03:59:42 11 A. Yes, exactly. They were deleted and put in different  
03:59:44 12 places, and that's why it takes time to discover them. So  
03:59:48 13 it's -- the whole picture becomes clearer and clearer when I  
03:59:51 14 have more and more emails. And some of this email was  
03:59:53 15 deleted, but it wasn't totally deleted because there's a  
03:59:59 16 hold on those documents that nothing can be deleted.

04:00:38 17 Q. I'm going to hand you what's been marked as P4.

04:00:59 18 A. Thank you.

04:01:00 19 Q. Can you tell the Court what this document, P4, is?  
04:01:07 20 Is this one of the emails that you found?

04:01:09 21 A. Yes, this is one of them.

04:01:19 22 Q. And what is the date on this at the top on the email,  
04:01:23 23 at the top of the first page?

04:01:24 24 A. That's November 3rd, 2014.

04:01:28 25 Q. And again, what was the start date for Mr. Kelly with

Chua - Direct

04:01:37 1 Easoon when he started?

04:01:38 2 A. 2013.

04:01:40 3 Q. Okay. If you can look at the third page, what's  
04:01:46 4 Bates numbered EASOON 960.

04:01:48 5 A. Yes.

04:01:51 6 Q. If you look at the very bottom, can you tell me who  
04:01:56 7 the -- there's an email from and to.

04:01:59 8 A. Yes. On this page, the email was Arjen Veltman.

04:02:07 9 There's Brett Kelly and Rene Zaal.

04:02:10 10 Q. Okay. And so Arjen Veltman, who is he?

04:02:16 11 A. Arjen Veltman is one of the owners and directors of  
04:02:21 12 MOSO International B.V.

04:02:25 13 Q. And Rene Zaal is?

04:02:27 14 A. Rene Zaal, as I understand, is the CO of MOSO  
04:02:34 15 International B.V.

04:02:34 16 Q. And on the third page, you'll see there's an email,  
04:02:38 17 October 31st, 2014 from Brett Kelly.

04:02:42 18 A. Yeah.

04:02:43 19 Q. And who was that solely to?

04:02:46 20 A. It's from Arjen Veltman to Brett Kelly and Rene.

04:02:56 21 Q. Okay. And if you go one step down, was there an  
04:02:59 22 email from Brett Kelly?

04:03:00 23 A. Yeah, and then further down, that's from Brett Kelly  
04:03:02 24 to Arjen Veltman and Rene Zaal.

04:03:05 25 Q. Okay. And so in this document, there was a forward

Chua - Direct

04:03:10 1 from an email from William Jopling --

04:03:13 2 A. Yeah.

04:03:14 3 Q. -- to Brett Kelly at the very bottom. Are you copied  
04:03:17 4 on that?

04:03:17 5 A. Yes. Yes, I was copied on this.

04:03:20 6 Q. And then when Brett Kelly forwarded it to Arjen  
04:03:23 7 Veltman, MOSO North America, and Rene Zaal, were you copied  
04:03:26 8 on that forward?

04:03:27 9 A. It is shown here I was not copied, and I really do  
04:03:29 10 not know anything about this until I found the emails.

04:03:34 11 Q. And then if you look at the second page, 959 --

04:03:37 12 A. Yeah.

04:03:43 13 Q. -- do you see there's an email from Rene Zaal --

04:03:45 14 A. Yeah.

04:03:46 15 Q. -- to Arjen Veltman and Brett Kelly?

04:03:48 16 A. Yes.

04:03:48 17 Q. Is this a reply to the document or the email that  
04:03:53 18 Brett Kelly sent to Arjen Veltman and Rene Zaal?

04:03:57 19 A. Yes, it is.

04:03:59 20 Q. And in this from Mr. Zaal, who's the president of  
04:04:02 21 MOSO International B.V., can you briefly read this email?

04:04:09 22 A. Yeah. Well -- well, it says here, "Dear Brett, I'm  
04:04:14 23 just thinking that you should a little bit 'Chinese' now.

04:04:20 24 The principle is that when someone is asking you  
04:04:23 25 to do something which is inconvenient (or you do not like to

Chua - Direct

04:04:28 1 do for some reason)", and in capital letters "JUST IGNORE OR  
04:04:33 2 DELAY."

04:04:33 3 "In this case you do not want to report  
04:04:36 4 something which you already did before and which was not  
04:04:39 5 addressed by the receiver.

04:04:41 6 Also in this case you have been asked to report  
04:04:44 7 all potential projects, on which you are working now. So  
04:04:48 8 not in YOUR interest (and also not in the interest of MOSO  
04:04:53 9 and you together).

04:04:56 10 Better now not replying. When they ask again,  
04:05:00 11 you can say that you plan to do it, but you are VERY busy  
04:05:06 12 (which is true.)

04:05:08 13 When they ask again, you say; sorry, I forgot.

04:05:12 14 When they ask again, you send something, but  
04:05:16 15 incomplete.

04:05:17 16 Rene."

04:05:22 17 Q. And in response on the first page, 958 --

04:05:25 18 A. Yeah. Sorry. I left out the last sentence on the  
04:05:29 19 next page. It says, "BY the way, this is not an European or  
04:05:33 20 USA approach, but for Chinese it works."

04:05:38 21 Q. And then on the first page, Page 958, did Brett Kelly  
04:05:42 22 respond to Rene Zaal, the president of MOSO?

04:05:46 23 A. Yes, he did, and he says, "Hi Rene. Yes thank you  
04:05:50 24 for the advice. Not to worry as all these accounts and  
04:05:54 25 relationships are mine! I will drag my feet. I am supposed

Chua - Direct

04:05:58 1 to send the projections to Avery and I'm now traveling for  
04:06:01 2 the next few weeks. It feels as though he is anticipating  
04:06:05 3 my departure and thinks the information is worth more than  
04:06:09 4 the relationship. He must have a sense that if they were to  
04:06:12 5 try and do something with Dasso, not sure what he thinks  
04:06:16 6 that is, he will compete with MOSO.

04:06:20 7 I am just working to keep the work going and  
04:06:23 8 things moving forward next year.

04:06:25 9 Regards, Brett Kelly," president of Dasso.

04:06:28 10 Q. President of DassoXTR?

04:06:30 11 A. Yeah.

04:06:32 12 MR. HOOPES: Your Honor, I'll tender P4.

04:06:35 13 THE COURT: All right. Admitted.

04:06:35 14 (Plaintiff's Exhibit No. P4 was admitted into  
04:06:35 15 evidence.)

04:06:40 16 BY MR. HOOPES:

04:06:40 17 Q. I'll hand you what's been marked as P5.

04:07:36 18 A. Thank you.

04:07:36 19 Q. Is this one of the emails that was uncovered after  
04:07:42 20 Mr. Kelly left?

04:07:43 21 A. Yes, it is.

04:07:45 22 Q. And what is the date at the top of this email?

04:07:47 23 A. The date is November 6th, 2014.

04:07:52 24 Q. And if you look at the second page, Page 947 --

04:07:56 25 A. Yes.

Chua - Direct

04:07:58 1 Q. -- there's an email. It appears to be from you to  
04:08:03 2 Brett Kelly and William Jopling. Subject: DassoXTR Trip.

04:08:07 3 Do you see that?

04:08:07 4 A. Yes.

04:08:08 5 Q. And at the top of the page, did Brett Kelly forward  
04:08:13 6 this DassoXTR trip itinerary to Mr. Veltman and Mr. Zaal  
04:08:19 7 with MOSO?

04:08:20 8 A. Yes, it -- apparently, Brett Kelly forwarded with  
04:08:24 9 Brett Kelly at DassoXTR the whole information to Veltman at  
04:08:30 10 MOSO and Rene Zaal.

04:08:33 11 Q. Okay. And then on the first page, there was emails  
04:08:38 12 going back and forth between Arjen Veltman with MOSO to  
04:08:42 13 Brett Kelly and Rene Zaal; do you see that?

04:08:44 14 A. Yes.

04:08:44 15 Q. Are you copied anywhere on these emails?

04:08:47 16 A. No, I wasn't.

04:08:49 17 Q. Do you see if Jop was copied anywhere?

04:08:51 18 A. No, he wasn't.

04:08:54 19 Q. At the very top, there's an email from Brett Kelly to  
04:08:59 20 Mr. Veltman and Mr. Zaal with MOSO?

04:09:02 21 A. Yes.

04:09:03 22 Q. And in that, he's addressing -- he says, "Hi Arjen."

04:09:06 23 A. Yeah.

04:09:07 24 Q. Addressing Mr. Veltman?

04:09:08 25 A. Yeah.

Chua - Direct

04:09:10 1 Q. Can you read those --

04:09:12 2 A. Yes.

04:09:12 3 Q. -- two?

04:09:13 4 A. Yes. He says, "Hi Arjen. I think that will not be a  
04:09:18 5 problem. Knowing Jop he will keep me out of it because he  
04:09:22 6 knows that I am not happy about XTR being ignored. He knows  
04:09:27 7 the requests that I have repeatedly made went unanswered.  
04:09:32 8 If anything, I think I will be blamed for the problems.

04:09:35 9 I will get you everything I see and hear.

04:09:38 10 Regards, Brett."

04:09:40 11 Q. Okay. So that last sentence where Mr. Kelly told  
04:09:46 12 Mr. Veltman and Mr. Zaal at MOSO, "I will get you everything  
04:09:51 13 I see and hear," was that any type of his job  
04:09:54 14 responsibilities to keep a competitor, MOSO, informed of  
04:09:58 15 everything he sees and hears as the president of DassoXTR?

04:10:01 16 A. Obviously not. I mean, that is not expected of an  
04:10:05 17 employee, especially a president. The function of a  
04:10:08 18 president is to benefit your shareholder and of the company.  
04:10:14 19 You are not supposed to be sharing information to a  
04:10:17 20 competitor.

04:10:46 21 Q. I'm going to hand you what's been marked as P6. And  
04:10:58 22 is this one of the emails that you found Mr. Kelly left?

04:11:03 23 A. Yes.

04:11:07 24 Q. And the bottom, there's an email from a Brett  
04:11:11 25 Kelly --

Chua - Direct

04:11:11 1 A. Yeah.

04:11:11 2 Q. -- to Arjen Veltman with MOSO?

04:11:14 3 A. Yes.

04:11:16 4 Q. And in this, he's asking about testing and getting  
04:11:19 5 data from MOSO concerning testing in the U.S.?

04:11:23 6 A. Yeah.

04:11:26 7 Q. Brett.Kelly@rocketmail.com, do you know that email  
04:11:31 8 address?

04:11:32 9 A. No, I think until -- after I've seen these, the email  
04:11:35 10 is when I found it.

04:11:36 11 Q. When Brett Kelly was president of DassoXTR, was that  
04:11:41 12 one of the emails that the company gave him to use?

04:11:43 13 A. No, that's not.

04:11:44 14 Q. Okay. And at the top, Mr. Veltman responds to Brett  
04:11:55 15 Kelly --

04:11:55 16 A. Yeah.

04:11:56 17 Q. -- and copies Rene Zaal, the president of MOSO. It's  
04:12:00 18 a small email. Can you just read what Mr. Veltman said to  
04:12:04 19 Mr. Kelly?

04:12:04 20 A. Yes. "Dear Brett, that's a lot of testing and a lot  
04:12:09 21 of" money! "Of course something we would immediately do  
04:12:13 22 (such investment must be part of the business plan) if we  
04:12:18 23 were in charge of the US market.

04:12:20 24 "I put all testing data in drop box," and  
04:12:23 25 there's a link. Please use it wisely. "We normally don't

Chua - Direct

04:12:26 1 send those reports to just anybody because before you know  
04:12:30 2 it, people remove the MOSO name, put another and use it for  
04:12:34 3 their own product... I trust you use it well. As long as  
04:12:39 4 you move those 100+ glass containers to MOSO, it is ok.

04:12:44 5 Good luck.

04:12:44 6 Kind regards, Arjen."

04:12:47 7 Q. So in this email, Mr. Veltman is saying that that's a  
04:12:52 8 lot of money, and of course, it's something they would  
04:12:55 9 immediately do if they were in charge of the U.S. market?

04:12:58 10 A. Yeah.

04:12:58 11 Q. Do you see that?

04:12:59 12 A. Yes.

04:12:59 13 Q. And in this, this is in 2015, Mr. Veltman is saying  
04:13:04 14 as long as you -- and the email was to Mr. Kelly; correct?

04:13:08 15 A. Yes.

04:13:08 16 Q. "As long as you move those 100-plus containers to  
04:13:12 17 moso, it is okay" with a smily face. Do you see that?

04:13:15 18 A. Yes. Yes.

04:13:16 19 Q. Were you copied on this email?

04:13:18 20 A. No, I wasn't.

04:13:19 21 Q. Did you know about this proposal being discussed  
04:13:23 22 between Mr. Kelly and Mr. Veltman with MOSO concerning  
04:13:28 23 taking a hundred containers and giving them to MOSO?

04:13:32 24 A. No, I didn't. And to me, like the name Universal  
04:13:36 25 product, that's a big name. That would be a great customer

Chua - Direct

04:13:38 1 to have.

04:13:39 2 Q. And was this opportunity ever given to DassoXTR by

04:13:43 3 Mr. Kelly?

04:13:43 4 A. No, it wasn't mentioned. It never came up to

04:13:46 5 discuss.

04:13:48 6 Q. Is that a business opportunity that DassoXTR would

04:13:52 7 have liked to have?

04:13:52 8 A. Definitely.

04:13:54 9 Q. Was that a business opportunity that DassoXTR

04:13:57 10 expected Mr. Kelly to service or be out there looking for on  
04:14:01 11 behalf of Easoon?

04:14:02 12 A. Definitely, yes.

04:14:03 13 MR. PASTERNAK: Objection; leading, Your Honor.

04:14:05 14 THE COURT: Overruled. All right.

04:14:09 15 So Mr. Hoopes, you have five more minutes, and  
04:14:11 16 then I'm going to turn it over for cross.

04:14:14 17 MR. HOOPES: Okay.

04:14:14 18 BY MR. HOOPES:

04:14:25 19 Q. So at a point in time, as you testified, Mr. Kelly  
04:14:27 20 left --

04:14:28 21 A. Yes.

04:14:29 22 Q. -- Easoon?

04:14:29 23 A. Yes.

04:14:30 24 Q. And do you know where he went?

04:14:32 25 A. He resigned, and then the same week I found him

Chua - Direct

04:14:38 1 declaring himself as the CEO and president of MOSO North  
04:14:42 2 America.

04:14:43 3 Q. And at any time did he have any discussions with you  
04:14:47 4 or give you a heads up or advance notice that he was getting  
04:14:52 5 ready to head up a major competitor in the U.S. market?

04:14:55 6 A. No, he didn't.

04:14:58 7 Q. And prior to that one month prior, did Mr. Kelly  
04:15:04 8 travel with customers of Easoon?

04:15:07 9 A. Yes, he did.

04:15:08 10 Q. And where was that?

04:15:09 11 A. He has traveled to China with customers that Easoon  
04:15:15 12 has to show him the factory and the product, as well he had  
04:15:19 13 traveled to Canada to meet up with customers like Weston  
04:15:24 14 Premium and Richelieu.

04:15:25 15 Q. And this is May 2017, the month before he left?

04:15:30 16 A. Yes, keep in mind that even the visit up to Weston  
04:15:35 17 was within two weeks before he resigned.

04:15:39 18 Q. And was Easoon understanding that he was traveling to  
04:15:44 19 China for a trip to customers?

04:15:46 20 A. Yes, there was a trip like two weeks earlier to  
04:15:49 21 travel to China.

04:15:51 22 Q. Okay. And was Mr. Kelly able to get a direct flight  
04:15:56 23 to China?

04:15:57 24 A. He told -- he called me up and said he wasn't able to  
04:16:01 25 get a direct flight to China or route through the side, so

Chua - Direct

04:16:04 1 he was going to route through Europe.

04:16:07 2 Q. And where did you find out later that Mr. Kelly  
04:16:09 3 actually went instead of going directly to China to meet  
04:16:12 4 with customers?

04:16:12 5 A. I later found out that he went to Amsterdam and to  
04:16:16 6 meet up with MOSO and had been in the MOSO office. Then he  
04:16:21 7 continued his flight to China. And all these were paid by  
04:16:28 8 Easoon.

04:16:31 9 Q. I'm going to hand you what's marked as Plaintiff's  
04:16:35 10 Exhibit P7. And can you tell the Court what P7 is?

04:16:54 11 A. Yeah, P7, this is the sales data and expenses for  
04:17:03 12 Easoon's DassoXTR division.

04:17:04 13 Q. And when Mr. Kelly left, did he pursue customers of  
04:17:11 14 Easoon and take those customers away?

04:17:12 15 A. Yes, he did.

04:17:15 16 Q. And this document here, what does this reflect?

04:17:21 17 A. This?

04:17:22 18 Q. Yes.

04:17:22 19 A. On the revenue side, it actually reflects that the  
04:17:25 20 drop in 2018. Well, the key point here, though, is we were  
04:17:30 21 growing our business. And if you see like in 2017, our  
04:17:34 22 sales has grown. But in that meet -- in 2017, Brett Kelly  
04:17:39 23 resigned and immediately goes and visits all our  
04:17:42 24 distributors.

04:17:44 25 Subsequently, the distributors stopped buying

Chua - Direct

04:17:46 1 from us and channeled all their business to MOSO. And it  
04:17:50 2 reflects in our 2018 sales cost. Then the year sales is  
04:17:55 3 gone.

04:17:56 4 Q. And then 2016, what was the revenue?

04:17:59 5 A. 2016 revenue is 1.5 million.

04:18:02 6 Q. And this reflects DassoXTR's sales and revenue?

04:18:06 7 A. Yes, it is.

04:18:07 8 Q. And then in 2017, what was the revenue?

04:18:09 9 A. 2017, it was 2.2 million. Nearly 2.3 million.

04:18:15 10 Q. And Brett Kelly left in June 2017?

04:18:18 11 A. Yes, he left in June.

04:18:20 12 Q. And just briefly, when customers issue purchase  
04:18:26 13 orders --

04:18:26 14 A. Yeah.

04:18:26 15 Q. -- how does that --

04:18:27 16 A. Well, usually we will try to have a kind of cutoff  
04:18:33 17 buying season. So we provide a discount if customer will  
04:18:38 18 take the products throughout the year. So this is what  
04:18:39 19 happens. Like in 2017, customer place order earlier for it  
04:18:43 20 to be delivered throughout the year.

04:18:46 21 Q. And then 2018, did you see a decrease in sales?

04:18:49 22 A. Yes, 2018, the sales was significantly, you know,  
04:18:53 23 reduced, almost 50 percent.

04:18:55 24 Q. And what was the amount of sales in 2018?

04:18:57 25 A. It was 1.4 million only. And this -- we have to get

Chua - Direct

04:19:01 1 new customer to patch up.

04:19:03 2 Q. And what were the customers, the major customers that  
04:19:07 3 left Easoon DassoXTR and went --

04:19:12 4 A. The distributors, because they bought in bulk and,  
04:19:14 5 then they dispute the different dealer, and those were  
04:19:19 6 Weston Premium and Richelieu. Disdero Lumber. Boise  
04:19:23 7 Cascade.

04:19:23 8 Like Boise Cascade is big name in the typical  
04:19:27 9 industry where they distribute large amounts of products.

04:19:30 10 Q. And since, for example, Boise Cascade left Easoon and  
04:19:37 11 went to MOSO, have you been able to recover that business?

04:19:40 12 A. Well, I wasn't able to recover Boise Cascade because  
04:19:44 13 when we went to call them, they don't believe us, and they  
04:19:47 14 say they have a relationship with Brett Kelly, and that they  
04:19:55 15 believe we are being bankrupt.

04:19:57 16 Q. Without going into those specifics, was Disdero a  
04:20:06 17 customer that you lost?

04:20:06 18 A. Yes. Disdero is not a customer that we lost, but  
04:20:10 19 subsequently, like end of last year, they came back.

04:20:15 20 Q. And based on your declaration at the time, what did  
04:20:19 21 you estimate that your damages and your losses were --

04:20:24 22 A. Yeah.

04:20:25 23 Q. -- at the time?

04:20:25 24 A. Our losses would be at like 2 million.

04:20:31 25 Q. Do you know specifically, though, a total amount that

Chua - Cross

04:20:34 1 you've been damaged as a result of MOSO's entry into the  
04:20:39 2 U.S. market?

04:20:39 3 A. No, I don't. It's really difficult to assess, but  
04:20:42 4 the key point is we're growing. We will keep growing. And  
04:20:46 5 outside -- and this hit us, so we don't really know what is  
04:20:49 6 the accidental damage. And the 1.4 million, we try to  
04:20:53 7 recruit and find new customers.

04:20:56 8 MR. HOOPES: Your Honor, I have no further  
04:20:57 9 questions.

04:20:57 10 THE COURT: All right. Thank you.

04:20:59 11 Mr. Pasternak, any cross-examination?

04:21:00 12 MR. PASTERNAK: Yes, Your Honor.

04:21:00 13 CROSS-EXAMINATION

04:21:00 14 BY MR. PASTERNAK:

04:21:06 15 Q. Good afternoon, Mr. Chua.

04:21:08 16 A. Hi. Good afternoon.

04:21:09 17 Q. Since the motion for the preliminary injunction was  
04:21:11 18 filed in November 2018, you have lost no customers to MOSO;  
04:21:16 19 correct?

04:21:16 20 A. We? Repeat. Sorry.

04:21:18 21 Q. Yeah. Since the preliminary injunction was filed,  
04:21:21 22 you have lost no customers to MOSO?

04:21:23 23 A. There is, but I -- I would not know because this --  
04:21:28 24 there's just too many of them out there, so I can only say I  
04:21:31 25 do not know specifically.

Chua - Cross

04:21:32 1 Q. You don't know whether you lost customers to MOSO or  
04:21:35 2 not since the preliminary injunction was filed?

04:21:36 3 A. I would say I have lost sales.

04:21:42 4 Q. From who?

04:21:44 5 A. From, you mean the customer name?

04:21:47 6 Q. Yes.

04:21:47 7 A. American Lumber would be one.

04:21:50 8 Q. All right. How much sales?

04:21:51 9 A. I don't have specific numbers on the tip of my hand  
04:21:54 10 right now.

04:21:54 11 Q. Any others?

04:21:55 12 A. Dainie Coiler.

04:22:00 13 Q. Can you spell that?

04:22:01 14 A. D-A-I-N-I-E C-O-I-L-E-R.

04:22:08 15 Q. Can you say how much?

04:22:09 16 A. I can't.

04:22:11 17 Q. Any others?

04:22:11 18 A. Not from the top of my head.

04:22:20 19 Q. But you have taken a customer from MOSO; correct?

04:22:23 20 A. I wouldn't know if I've taken their customer, but  
04:22:25 21 they shouldn't be existing.

04:22:28 22 Q. Well, they were a customer of MOSO; correct?

04:22:29 23 A. Those are our customers in the first place.

04:22:32 24 Q. But you took it back from MOSO since the preliminary  
04:22:34 25 injunction was filed?

Chua - Cross

04:22:35 1 A. They came back.

04:22:36 2 Q. They came back since the preliminary injunction was  
04:22:38 3 filed; correct?

04:22:39 4 A. I wouldn't know whether it's after the preliminary  
04:22:41 5 injunction is filed, but they came back. They came back,  
04:22:44 6 but they put out a long email saying why they came back.

04:22:47 7 Q. And what did they say?

04:22:49 8 A. Well, they basically say that they are -- they don't  
04:22:53 9 trust the supplier that they have right now, so that's why  
04:22:57 10 they came back. They're being lied to.

04:22:59 11 Q. And did you tell Disdero that MOSO was selling  
04:23:03 12 counterfeit products?

04:23:04 13 A. I didn't tell them specifically, but I said there's  
04:23:08 14 an infringement going on.

04:23:09 15 Q. Did anyone at your company tell Disdero that MOSO was  
04:23:12 16 selling counterfeit products?

04:23:14 17 A. I cannot be certain, but -- I cannot be certain.

04:23:19 18 Q. Is that a no or a yes?

04:23:20 19 A. Can you repeat that question?

04:23:24 20 Q. Did anyone in your company tell Disdero that MOSO was  
04:23:28 21 selling counterfeit products?

04:23:29 22 A. I would believe they tell infringement product.

04:23:36 23 Q. How much business have you done from Disdero since  
04:23:40 24 you got it back from MOSO?

04:23:42 25 A. I don't have that number, but I -- if I would need to

Chua - Cross

04:23:47 1 guess, it would be about 50,000 roughly. Sorry, 500,000  
04:23:56 2 roughly.

04:23:57 3 Q. So since the preliminary injunction was filed, you  
04:24:00 4 took a customer from MOSO of \$500,000; correct?

04:24:04 5 A. As I told you, they came back to us. They came back  
04:24:09 6 and tell us that they want to do business with us.

04:24:11 7 Q. Wasn't that harm to MOSO?

04:24:13 8 A. That wasn't a harm if it's considered that they  
04:24:18 9 started the -- they should be already here in the first  
04:24:21 10 place.

04:24:25 11 Q. Now, there are two companies selling competing bamboo  
04:24:28 12 products in the United States; correct?

04:24:30 13 A. Yes.

04:24:31 14 Q. And what are the two products?

04:24:33 15 A. Sorry. Is that a question?

04:24:38 16 Q. Yes. What are the two products called?

04:24:42 17 A. It's a DassoXTR and MOSO Bamboo X-Treme.

04:24:45 18 Q. And if MOSO had stopped from selling the bamboo  
04:24:49 19 product, there would only be one player in the market;  
04:24:53 20 right?

04:24:53 21 A. Right. That is supposed to be because I have the  
04:24:56 22 exclusive distribution agreement.

04:24:59 23 Q. Well, will there only be one player in the market if  
04:25:03 24 MOSO is stopped from selling the product?

04:25:05 25 A. Yes.

Chua - Cross

04:25:05 1 Q. Would that be any control?

04:25:08 2 A. I don't get that. I don't understand you.

04:25:10 3 Q. Sorry. Will there be any control on your pricing at

04:25:14 4 that point?

04:25:15 5 A. There will always be a control pricing. There will

04:25:17 6 be a competing product from other products, but not

04:25:20 7 necessarily bamboo. And I will have always benchmark

04:25:25 8 against the industry.

04:25:36 9 Q. You filed a declaration in this case; correct?

04:25:38 10 A. Yes. I have a declaration.

04:25:41 11 Q. Did you list any evidence of lost customers?

04:25:43 12 A. Can I take a look at --

04:25:45 13 Q. Yes.

04:25:46 14 A. -- my declaration?

04:25:48 15 Q. Yes.

04:27:02 16 MR. PASTERNAK: May I approach, Your Honor?

04:27:05 17 THE COURT: Sure.

04:27:11 18 BY MR. PASTERNAK:

04:27:12 19 Q. So Mr. Chua, it's Exhibit A to Tab D.

04:27:15 20 A. Thank you.

04:27:36 21 Q. And just to remind you of the question: Did you have

04:27:38 22 any evidence of lost customers in your declaration?

04:27:41 23 A. I believe I mentioned Weston Premium Wood.

04:27:54 24 Q. Is that in your declaration?

04:27:55 25 A. Can you point me in my declaration because this is

Chua - Cross

04:28:02 1 huge? Okay. So which paragraph are we talking about?

04:28:17 2 Q. You tell me. I'm asking you where this evidence is.

04:28:24 3 A. Then I would have to read through.

04:28:26 4 Q. Yes.

04:28:27 5 A. Thank you. And while you're at it, why don't you  
04:28:43 6 look for evidence of price erosion and lost market share.

04:28:46 7 THE COURT: Mr. Pasternak, I think one thing at  
04:28:48 8 a time.

04:28:50 9 MR. PASTERNAK: Yes, Your Honor.

04:30:23 10 THE WITNESS: Yes. Mr. Pasternak, I have looked  
04:30:24 11 through the title here. There's nothing on that evidence of  
04:30:29 12 loss of customers.

04:30:29 13 BY MR. PASTERNAK:

04:30:33 14 Q. All right. Did you look -- will you please look for  
04:30:35 15 any evidence of price erosion?

04:30:38 16 THE COURT: Why don't you first make sure that  
04:30:41 17 you and he are talking about the same thing first when you  
04:30:44 18 say price erosion.

04:30:44 19 BY MR. PASTERNAK:

04:30:45 20 Q. Price erosion, what I mean when I say that is your  
04:30:48 21 prices have decreased because of MOSO being in the market.

04:30:53 22 Yes?

04:30:54 23 A. Yes, I understand, but does it have to be in my  
04:30:56 24 declaration? I mean --

04:30:57 25 Q. I'm asking you if it's in your declaration.

Chua - Cross

04:30:59 1 A. It's not in this declaration.

04:31:01 2 Q. All right. And then the last one is: Is there any

04:31:05 3 evidence of loss of market share in your declaration?

04:31:07 4 A. The evidence is not in the declaration.

04:31:18 5 Q. You testified that Easoon has lost \$2 million because

04:31:27 6 of MOSO being in the market; correct?

04:31:30 7 A. Yes.

04:31:31 8 Q. But you also testified that it's impossible to

04:31:35 9 compute the damages; correct.

04:31:37 10 A. Yes.

04:31:37 11 Q. Which is it, \$2 million or impossible to compute?

04:31:41 12 A. This doesn't conflict with each other. It's

04:31:46 13 difficult to compute the losses because you do not know the

04:31:49 14 growth. Every year the company grows, and every year you

04:31:51 15 get new customers. And the original customers will continue

04:31:54 16 to buy, and whatever they continue to buy could grow or

04:31:57 17 could shrink. So how to estimate an exact figure of

04:32:03 18 damages --

04:32:04 19 Q. So it's impossible to compute an exact figure?

04:32:07 20 A. Of damages, yes.

04:32:09 21 Q. How did you compute \$2 million then?

04:32:13 22 A. That is what we have lost in terms of existing sales

04:32:15 23 that we have.

04:32:17 24 Q. So you have lost \$2 million in sales or some

04:32:21 25 percentage of that in profits?

Chua - Cross

04:32:23 1 A. I kind of need to understand a bit.

04:32:28 2 Q. Sure. Have you lost \$2 million in actual sales or

04:32:33 3 some percentage of \$2 million in product profits?

04:32:37 4 A. Well, for the three years at it, I would say between

04:32:41 5 2016, '17, okay, so it would be around 2017, 2018. I'm

04:32:55 6 confused. I'm really sorry.

04:32:58 7 Can you --

04:32:59 8 Q. Lets me ask it this way.

04:33:00 9 A. Yeah.

04:33:01 10 Q. Explain to the Court how you come up with a \$2

04:33:04 11 million number.

04:33:04 12 A. Of loss?

04:33:06 13 Q. Of loss.

04:33:09 14 A. Roughly, am I disclosing confidential information

04:33:14 15 here, though? That's fine? All right.

04:33:17 16 So which means roughly the containers on average

04:33:21 17 cost 50,000 and we're sending 50 containers a year for the

04:33:28 18 three years, 2016, 2017, 2018. And every container, we have

04:33:34 19 roughly 15,000 of gross profit margin. That means 50,000

04:33:43 20 times 15 containers times three years, that is the loss.

04:33:50 21 And that will come out to be 2.2 -- 5 million roughly.

04:33:56 22 Q. But you're not making \$50,000 per container, are you?

04:33:59 23 You're making some percentage of that per container?

04:34:02 24 A. Fifteen percent of it.

04:34:05 25 Q. So --

Chua - Cross

04:34:05 1 A. And that's what I'm using as --

04:34:07 2 Q. So you're making 15 percent profit on a \$50,000

04:34:10 3 container; correct?

04:34:11 4 A. Correct. Yes.

04:34:24 5 Q. New Bamboo is the owner of a Chinese counterpart to

04:34:28 6 the '578 patent; right?

04:34:29 7 A. Yes, I believe so.

04:34:31 8 Q. And New Bamboo is a participating party in the Dasso

04:34:35 9 Group; correct?

04:34:36 10 A. Which Dasso Group are you talking about? The China

04:34:39 11 Dasso Group?

04:34:39 12 Q. Is there more than one?

04:34:41 13 A. There's a Dasso International, and there's -- in U.S.

04:34:48 14 registered in New York, and there's a Dasso Group China.

04:34:51 15 Q. Let's say the Dasso Group China. New Bamboo is a

04:34:55 16 participating part in the Dasso Group China; correct?

04:34:58 17 A. Frankly, I do not know.

04:35:00 18 Q. If Mr. Hoopes said they were, would you believe him?

04:35:02 19 A. I probably would have to ask the owner of the New

04:35:08 20 Bamboo to get that information.

04:35:10 21 Q. All right. Let's mark an exhibit.

04:36:10 22 MR. PASTERNAK: Permission to approach, Your

04:36:12 23 Honor?

04:36:12 24 THE COURT: Sure.

04:36:14 25 THE WITNESS: Thank you.

Chua - Cross

04:36:28 1 BY MR. PASTERNAK:

04:36:32 2 Q. Mr. Chua, take a look at Tab 51 in the exhibit  
04:36:35 3 binder, please.

04:36:36 4 A. Fifty-one, yes.

04:36:39 5 Q. Can you identify what's located at Tab 51?

04:36:41 6 A. Yes.

04:36:42 7 Q. What is it?

04:36:43 8 A. A memorandum.

04:36:47 9 Q. Have you seen it before?

04:36:49 10 MR. HOOPES: Objection, Your Honor.

04:36:51 11 THE COURT: What's the basis of the objection?

04:36:53 12 MR. HOOPES: Although I don't know why there's  
04:36:57 13 not Bates numbers at the bottom, but there's a batch of  
04:37:02 14 documents that were inadvertently disclosed. These  
04:37:06 15 documents were in the middle of a discovery dispute we've  
04:37:10 16 raised.

04:37:10 17 We've sent a privilege log. We've raised an  
04:37:13 18 attorney-client privilege.

04:37:14 19 THE COURT: Okay. All right. So I'm going  
04:37:17 20 to --

04:37:17 21 MR. PASTERNAK: Your Honor, if I may, I received  
04:37:19 22 this document in a subpoena with no privilege designations  
04:37:25 23 from Disdero.

04:37:26 24 THE COURT: Well, apparently that's the reason  
04:37:28 25 why you're saying it was sent in error; right? So I'm not

Chua - Cross

04:37:36 1 going to rule on privilege objections here other than to not  
04:37:43 2 put them into the record. I'm going to accept Mr. Hoopes'  
04:37:47 3 representation that there's some kind of discussion going on  
04:37:50 4 about this matter, and you shouldn't have to rely on letters  
04:37:58 5 from attorneys to make your defense here. So if you've got  
04:38:04 6 something else, go ahead and do that.

04:38:05 7 MR. PASTERNAK: You can put that aside.

04:38:15 8 BY MR. PASTERNAK:

04:38:19 9 Q. So New Bamboo and the Zhuanghe Factory have entered  
04:38:22 10 into a covenant not to sue under all patents; correct?

04:38:25 11 A. I'm sorry. I'm not getting the whole sentence.

04:38:28 12 Q. New Bamboo and the Zhuanghe Factory have entered into  
04:38:32 13 covenants not to sue?

04:38:33 14 A. Sorry. New Bamboo and what?

04:38:35 15 Q. Zhuanghe Factory.

04:38:37 16 A. I don't understand Zhuanghe.

04:38:42 17 Q. Zhuanghe?

04:38:43 18 A. Zhuanghe.

04:38:45 19 Q. Sorry.

04:38:46 20 A. Sorry, too. I just want to get it.

04:38:49 21 Q. So my question is New Bamboo and the Zhuanghe Factory  
04:38:52 22 have entered into a covenant not to sue under all patents;  
04:38:56 23 correct?

04:38:56 24 A. You have a document? I don't recall immediately from  
04:39:01 25 here.

Chua - Cross

04:39:02 1 Q. You don't recall?

04:39:03 2 A. I know that there's a contract between two parties,  
04:39:07 3 but I do not recall specifically who's on that. And if you  
04:39:11 4 have the document, that would help me a lot.

04:39:14 5 Q. I understand. All right.

04:39:18 6 Zhuanghe Factory sells bamboo products to MOSO

04:39:20 7 B.V.; correct?

04:39:21 8 A. That's what I believe. Yes.

04:39:26 9 Q. And Steve Chen is the chairman of the board of the  
04:39:29 10 Dasso Group; correct?

04:39:30 11 A. No, I don't think Steve Chen is a chairman.

04:39:32 12 Q. What's his title?

04:39:33 13 A. I believe he's one of the vice presidents.

04:39:35 14 Q. James Chen is Steve Chen's brother; correct?

04:39:39 15 A. Yes, that's correct.

04:39:52 16 Q. Hai Lin is an officer of the Dasso Group; correct?

04:39:54 17 A. Yes. It's most specifically for the HDT.

04:40:14 18 MR. PASTERNAK: Nothing further, Your Honor.

04:40:15 19 THE COURT: All right, thank you, Mr. Pasternak.

04:40:16 20 Anything further, Mr. Hoopes?

04:40:27 21 MR. HOOPES: Just briefly, Your Honor.

04:40:31 22 THE COURT: I hope so.

04:40:43 23 MR. HOOPES: First of all, Your Honor, I'd like  
04:40:44 24 to make sure I tender Plaintiff's 1 through 7.

04:40:50 25 THE COURT: Okay. As far as I'm concerned,

Chua - Redirect

04:40:52 1 they're admitted.

04:40:52 2 REDIRECT EXAMINATION

04:40:53 3 BY MR. HOOPES:

04:40:53 4 Q. Mr. Chua, in your declaration --

04:41:00 5 A. Yes.

04:41:15 6 Q. Do you have your declaration up there in front of

04:41:17 7 you?

04:41:18 8 A. Yes. No.

04:41:25 9 MR. PASTERNAK: That is at Tab D, Exhibit A.

04:41:29 10 BY MR. HOOPES:

04:41:29 11 Q. Tab D, Exhibit A.

04:41:31 12 A. Exhibit A. That should be -- yes.

04:41:36 13 Q. If you can turn to Paragraph 39.

04:41:40 14 A. Yes.

04:41:44 15 Q. And in Paragraph 39 -- well, did you reference the  
04:41:51 16 loss of customers by Easoon because of the creation and  
04:41:55 17 operations of MOSO North America?

04:41:57 18 A. Yes. I did.

04:42:00 19 Q. So in your declaration, you do make reference to the  
04:42:03 20 loss of customers because of the actions of MOSO; is that a  
04:42:07 21 correct statement?

04:42:08 22 A. Yes, that would be a correct statement.

04:42:11 23 Q. And is it your testimony before the Court that  
04:42:16 24 customers were lost as a direct result of MOSO'S activities  
04:42:19 25 and entering into the North American market?

04:42:22 1 A. Yes, I did, and that's how it is.

04:42:25 2 Q. And is that not by the terms a loss of market share  
04:42:28 3 to lose customers to MOSO?

04:42:31 4 A. Yes, that's how it is. Yes.

04:42:34 5 MR. HOOPES: I have no further questions, Your  
04:42:35 6 Honor.

04:42:35 7 THE COURT: All right. Thank you. Mr. Chua,  
04:42:37 8 you may step down.

04:42:39 9 Thank you very much. Watch your step. Okay.

04:42:41 10 THE WITNESS: Thank you, Your Honor.

04:42:43 11 THE COURT: All right. So I assume that takes  
04:42:44 12 care of your fact witnesses?

04:42:46 13 MR. O'ROURKE: Yes, Your Honor.

04:42:46 14 THE COURT: All right. What about you all?

04:42:49 15 MR. PASTERNAK: Yes, Your Honor. We have two  
04:42:52 16 fact witnesses. Can we take a two-minute recess?

04:42:54 17 THE COURT: Sure.

04:42:56 18 COURT CLERK: All rise.

04:52:56 19 (Recess was taken.)

04:52:56 20 COURT CLERK: All rise.

04:52:57 21 THE COURT: Shall we go? And if I can ask  
04:52:59 22 everyone to be seated.

04:53:00 23 Ms. Gentry, how long do you expect your witness  
04:53:04 24 to be on direct?

04:53:06 25 MR. PASTERNAK: Your Honor, we have two.

04:53:07 1 Probably 15 minutes each.

04:53:08 2 THE COURT: Okay. Well, let's go then. Sorry.

04:53:12 3 MR. O'ROURKE: Before we start, Judge, there was  
04:53:13 4 a point in the transcript -- I did raise this issue with  
04:53:16 5 Mr. Pasternak during the break -- where Mr. Chua was  
04:53:19 6 testifying, and he testified about their profit margin, his  
04:53:22 7 profit margin. That is very highly confidential trade  
04:53:26 8 secret information of the plaintiffs. We want to see if we  
04:53:29 9 could get that portion of the transcript designated highly  
04:53:33 10 confidential.

04:53:33 11 THE COURT: Well, you'll be on the record having  
04:53:36 12 asked it. I don't tend to designate things that are said in  
04:53:39 13 open court as confidential because they're said in open  
04:53:41 14 court. But it will be a couple months before that  
04:53:47 15 transcript becomes public, and you can file papers if you  
04:53:50 16 want.

04:53:50 17 MR. O'ROURKE: Okay. Thank you, Your Honor.

04:53:51 18 THE COURT: Okay. Go ahead, Ms. Gentry.

04:53:54 19 MS. GENTRY: Defendant would like to call their  
04:53:57 20 first witness, fact witness, Rene Zaal.

04:54:00 21 THE COURT: Okay.

04:54:16 22 COURT CLERK: Good afternoon. Do you want to  
04:54:17 23 swear or affirm? Swear uses the Bible basically. Affirming  
04:54:20 24 does not.

04:54:21 25 THE WITNESS: Affirm.

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04:54:22 1                   COURT CLERK: Affirm. Please state and spell  
04:54:24 2 your full name for the record.

04:54:25 3                   THE WITNESS: My name is Rene Zaal.

04:54:28 4                   COURT CLERK: Can you spell that, please?

04:54:29 5                   THE WITNESS: R-E-N-E and Z-A-A-L.

04:54:34 6                   Renee Zaal, after having been duly affirmed, was  
04:54:43 7 examined and testified as follows:

04:54:43 8                   COURT CLERK: You may have a seat.

04:54:46 9                   DIRECT EXAMINATION

04:54:46 10 BY MS. GENTRY:

04:54:54 11 Q. Mr. Zaal, please introduce yourself to the Court.

04:54:57 12 A. My name is Rene Zaal.

04:55:00 13 Q. Where are you employed, Mr. Zaal?

04:55:02 14 A. I am employed in MOSO International Company.

04:55:08 15 Q. How long have you been employed at MOSO  
04:55:11 16 International?

04:55:11 17 A. From the start of the foundation of MOSO  
04:55:17 18 International which is in 1997.

04:55:21 19 Q. And what is your position at MOSO International?

04:55:23 20 A. My position is, sorry, CEO.

04:55:28 21 Q. And could you please tell us what MOSO International  
04:55:31 22 does?

04:55:32 23 A. MOSO -- MOSO International specializes in industrial  
04:55:40 24 bamboo products, and we buy mainly -- it's several Chinese  
04:55:47 25 factories, selling to most European countries and several

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04:55:52 1 countries in the world.

04:55:53 2 Q. And as the CEO of MOSO International, are you  
04:55:56 3 familiar with its day-to-day operations, including sales?

04:55:58 4 A. Yes, I am.

04:56:00 5 Q. And what is MOSO International's key product?

04:56:05 6 A. The key products -- well, I would call it family of  
04:56:12 7 products is MOSO Bamboo X-Treme.

04:56:20 8 Q. And why would you call it the key product?

04:56:24 9 A. Well, my estimation is that at least 50 percent of  
04:56:29 10 our turnover in MOSO International.

04:56:32 11 Q. And what is MOSO NA?

04:56:35 12 A. MOSO NA is a hundred-percent subsidiary of MOSO  
04:56:40 13 International.

04:56:40 14 Q. And what does MOSO NA do?

04:56:43 15 A. MOSO NA is responsible for the sales in the USA and  
04:56:51 16 Canada markets, and its focus is mainly on sales of MOSO  
04:57:01 17 Bamboo X-Treme products which is more or less 98, 97 percent  
04:57:06 18 of the turnover.

04:57:08 19 Q. And what is the relation between MOSO International  
04:57:11 20 and MOSO NA?

04:57:12 21 A. Well, MOSO International is -- is doing the sourcing,  
04:57:20 22 purchasing product, developments, arranging -- arranging the  
04:57:25 23 production control and shipments to the destination. And in  
04:57:29 24 this case, we will probably bring it to the USA product  
04:57:36 25 harbor, and also MOSO NA will import it and distribution of

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04:57:41 1 the product.

04:57:42 2 Q. And what is MOSO NA's key product?

04:57:45 3 A. MOSO NA's key product is MOSO Bamboo X-Treme.

04:57:50 4 Q. Okay. And what type of product is MOSO Bamboo  
04:57:54 5 X-Treme?

04:57:54 6 A. Well, MOSO Bamboo X-Treme is actually a family group  
04:57:58 7 of products, so it does all kinds of applications. There  
04:58:06 8 are common similarities between these products, but can be  
04:58:10 9 hundreds of products. Can be decking. Can be furniture  
04:58:14 10 components. Can be many, many different products.

04:58:18 11 Q. Is MOSO Bamboo X-Treme a bamboo scrimber product?

04:58:23 12 A. Yeah, you can characterize it as -- the family as a  
04:58:30 13 product based on scrimber technology. So composed bamboo  
04:58:37 14 with an additional heat treatment stage.

04:58:42 15 Q. Okay. And do you know how a bamboo scrimber product  
04:58:46 16 is made?

04:58:47 17 A. Yes, I do.

04:58:47 18 Q. Okay. Have you prepared a flow chart to assist you  
04:58:54 19 with your testimony in the bamboo scrimber market?

04:58:57 20 A. Yes, I have.

04:58:58 21 Q. I'm going to demonstrate the flow chart that  
04:59:01 22 Zaal prepared. Could you please explain to the judge how  
04:59:06 23 the bamboo scrimber product is made?

04:59:11 24 MR. O'KELLY: Objection. Your Honor, he has not  
04:59:14 25 been tendered as an expert witness in this instance.

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04:59:16 1 THE COURT: Well, he's the CEO of the company.

04:59:19 2 It's his main product. Why don't you ask another foundation  
04:59:22 3 question, but if he has any basis and knowledge at all, I'm  
04:59:27 4 inclined to let him do it.

04:59:27 5 BY MS. GENTRY:

04:59:30 6 Q. Mr. Zaal, do you have any knowledge about the bamboo  
04:59:33 7 scrimber product?

04:59:34 8 A. Definitely. This was already available almost in the  
04:59:39 9 beginning of MOSO -- MOSO International's establishment and  
04:59:44 10 a lot of scrimber products -- produced technology was  
04:59:49 11 already there, but produced and developed in the year 2002  
04:59:54 12 up until now hundreds of products. And a little bit later,  
04:59:58 13 there was also this additional with heat treatment step in  
05:00:04 14 it and to develop X-Treme -- and I've been very strongly  
05:00:08 15 involved in the development of all these products and also  
05:00:11 16 certainly for Bamboo X-Treme.

05:00:13 17 Q. Okay. So based on that, could you please explain to  
05:00:18 18 us how the bamboo scrimber product is made?

05:00:21 19 A. Yeah. This is a very general project. Bamboo is  
05:00:26 20 very schematic. Well, basically you use your segment, the  
05:00:31 21 culm which is the hollow woody culm. Then out of these  
05:00:37 22 segments, you can cut the second row.

05:00:41 23 The second picture, you see that. You can cut  
05:00:46 24 out the strips. The strips still have the skin and an inner  
05:00:49 25 member. You have to remove that by the plating process.

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05:00:54 1 After that, it goes in the crushing process in  
05:00:58 2 order to create more volume, surface volume because for  
05:01:03 3 later -- for later, it's important to get better bonding in  
05:01:08 4 the scrimber.

05:01:09 5 Then after that, you will create the glue  
05:01:17 6 dipping step mostly with phenolic glue. And then you put it  
05:01:24 7 in a mold, so a fixed form, and then you compress it to very  
05:01:29 8 high pressure to a scrimber to a beam, or hull, or a board.  
05:01:35 9 And from there, you can further develop -- profile it to all  
05:01:40 10 kinds of products.

05:01:41 11 Q. Thank you. And what are key differences between the  
05:01:44 12 general bamboo scrimber product and the MOSO Bamboo X-Treme  
05:01:49 13 products?

05:01:49 14 A. Well, the scrimber product is not specifically for --  
05:01:53 15 for outdoor. It's indoor-outdoor, but in outdoor your  
05:01:56 16 circumstances, the material will be exposed to much more  
05:02:00 17 different circumstances, humidity, rain, sunshine, snow. So  
05:02:06 18 you need to have product properties. You can engineer these  
05:02:09 19 properties, and actually for -- well, you have a lot in each  
05:02:13 20 step. You can make some changes, but the big change is that  
05:02:18 21 you do a heat treatment stage, and that way you can improve  
05:02:26 22 durability of the material and the stability of the  
05:02:28 23 material.

05:02:29 24 And secondly, you make a lot of changes in your  
05:02:33 25 crushing process.

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05:02:34 1 Q. Okay. And have you prepared a slide illustrating  
05:02:38 2 this crushing process?

05:02:39 3 A. Yes.

05:02:41 4 Q. Can you explain the crushing process?

05:02:45 5 A. I can. How we do it when we -- the crushing process  
05:02:51 6 is that you have the strip deskinned and remove the inner  
05:02:58 7 membrane. Include -- then you bring it -- sorry -- more.  
05:03:03 8 You add the plate strip and remove member. Then you bring  
05:03:11 9 it on a conveyor belt with the direction of the strip and  
05:03:16 10 the fibers of the strip, direction of the motion of the  
05:03:21 11 conveyor belt.

05:03:22 12 Then you go -- in the first stage, this is a  
05:03:25 13 multi-roller machine, but first stage is you create incision  
05:03:30 14 in the material. And the incisions are separate shop cuts  
05:03:37 15 with some distance between the cuts on the width and the  
05:03:40 16 length.

05:03:40 17 And then you bring it in a second stage on the  
05:03:43 18 machine, the machine line, and you use pressure rollers.  
05:03:47 19 Then you compress the material with a certain pressure that  
05:03:52 20 you compress it so that you get it controlled while breaking  
05:03:56 21 off the strip into fiber bundles. These fiber bundles are  
05:04:01 22 still connected, cross-linked fiber bundles or cross-linked  
05:04:08 23 strips about the same to make.

05:04:12 24 And this controlled cracking of the strip is  
05:04:15 25 very important. Not only do you bring more glue surface so

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05:04:19 1 that you get -- later get bonding and better quality of  
05:04:23 2 scrimber, but you avoid that -- you later, in the pressure,  
05:04:28 3 mold pressure process, that there will be additional cracks  
05:04:31 4 because these additional cracks will not add any glue on it,  
05:04:34 5 and it will make the -- give a lot of defects in your final  
05:04:40 6 product.

05:04:40 7 So you have to create a very controlled and,  
05:04:44 8 say, cracking strip in fiber forms, connected fiber lengths.

05:04:49 9 Q. Mr. Zaal, did you bring any demonstratives that could  
05:04:53 10 further help you explain this process?

05:04:55 11 A. I would like to show it because it's much more clear,  
05:05:00 12 I think.

05:05:02 13 MS. GENTRY: Your Honor, may I approach?

05:05:04 14 THE COURT: Sure.

05:05:10 15 BY MS. GENTRY:

05:05:11 16 Q. Mr. Zaal, I'm handing you three demonstratives that  
05:05:14 17 you brought with you to further explain the crushing  
05:05:17 18 process.

05:05:18 19 A. Where would you like me to start?

05:05:19 20 Q. Start at the beginning.

05:05:21 21 A. Okay. Well, at the beginning. I have to keep it in  
05:05:30 22 or can I take it out? Well, this is -- this is the incision  
05:05:37 23 roller which is the first step to create the more surface  
05:05:42 24 and to bring incision. You see that there are not in a row,  
05:05:48 25 and there's a different distance between the incision. This

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05:05:54 1 is the first step.

05:05:58 2 After this one, a pressure roller, which you  
05:06:02 3 don't have here. Then you create this product. You see --  
05:06:07 4 well, this is still connected, and you see that there's  
05:06:14 5 fiber bundles. You can see that a bit more.

05:06:16 6 So the more you crush it like that, the better  
05:06:19 7 your product will be in general. The problem is when you  
05:06:24 8 make it too good, then you also lose a lot of fibers. So  
05:06:27 9 that's why you try to find -- but at least you have -- you  
05:06:30 10 have to create fiber bundles so to show you a compound of  
05:06:35 11 these products. In this case, it's heat treated. That's  
05:06:37 12 why it's a darker color.

05:06:39 13 So one piece of this is -- this is one fiber  
05:06:46 14 bundle. This is several fiber bundles still connected by  
05:06:51 15 fibers. I can show you, this is a fiber bundle because here  
05:06:56 16 are the fibers. Yeah. So you see here the fibers are  
05:07:00 17 bundled, still connected. Here, you can see there is  
05:07:05 18 separate fibers.

05:07:07 19 So what we do, and this is a little bit  
05:07:09 20 different from the past, is that you create these cross  
05:07:14 21 connected fiber bundles to make very still easily manageable  
05:07:22 22 to deal with product which easily can put in a mold, but  
05:07:27 23 with a maximum surface to create a good scrimber.

05:07:30 24 Q. Thank you, Mr. Zaal.

05:07:31 25 Are most of the Bamboo X-Treme products made in

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05:07:36 1 a single factory of MOSO?

05:07:38 2 A. No. Can you repeat that?

05:07:40 3 Q. Are most of the Bamboo X-Treme products made in a

05:07:45 4 single factory?

05:07:46 5 A. MOSO X-Treme products are made in many factories,

05:07:51 6 probably five, six, seven, ten.

05:07:55 7 Q. Are all those factories using the same production

05:07:58 8 method?

05:07:58 9 A. Well, all -- I already told you that you can engineer

05:08:02 10 the products, so you have to see what are you making the

05:08:05 11 product, what kind of interpretation and what circumstances

05:08:09 12 it will be exposed. So actually, each product, you have to

05:08:14 13 change the parameters with every step.

05:08:18 14 So my answer is they do it all differently.

05:08:22 15 Besides the fact that they can have some different press

05:08:27 16 systems and different, say, base machinery, but generally,

05:08:32 17 it looks the same. But the first step, there are different

05:08:35 18 parameters.

05:08:37 19 Q. What will happen to MOSO if the injunction is

05:08:40 20 granted?

05:08:42 21 A. That would be a very big problem. I should say

05:08:50 22 actually devastating. It will -- I told you 97 percent is

05:08:57 23 the fall of MOSO NA. It will liquidate MOSO NA. Definitely

05:09:03 24 it will also have a big effect on, let's say, the general

05:09:06 25 investment from MOSO International to this activity. It

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05:09:13 1 probably will also have a serious consequence for, let's  
05:09:16 2 say, the labor force at MOSO International.

05:09:19 3 MS. GENTRY: Thank you, Mr. Zaal. Nothing  
05:09:21 4 further.

05:09:22 5 THE COURT: Actually, I just have one question.  
05:09:24 6 Where is your office?

05:09:27 7 THE WITNESS: Our office is in Zwaag. It's  
05:09:32 8 around 32 kilometers north of Amsterdam.

05:09:37 9 THE COURT: Okay. And --

05:09:38 10 THE WITNESS: But we have -- sorry.

05:09:39 11 THE COURT: I was going to say, and did you come  
05:09:41 12 from the Netherlands in order to be here today?

05:09:43 13 THE WITNESS: I come from the Netherlands. Yes,  
05:09:48 14 I arrived two days ago.

05:09:50 15 THE COURT: Okay. But basically you came from  
05:09:54 16 Europe --

05:09:55 17 THE WITNESS: Yeah.

05:09:56 18 THE COURT: -- in order to testify in this  
05:09:57 19 hearing?

05:09:57 20 THE WITNESS: Yeah.

05:09:57 21 THE COURT: Okay. Go ahead.

05:10:01 22 MS. GENTRY: Thank you.

05:10:01 23 CROSS-EXAMINATION

05:10:09 24 BY MR. O'KELLY:

05:10:09 25 Q. Good afternoon, Mr. Zaal. My name is Sean O'Kelly,

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05:10:23 1 and I represent the plaintiffs in this case.

05:10:27 2 Mr. Zaal, I'm going to mark as Plaintiff's  
05:10:31 3 Exhibit 8 your declaration. I believe it's in front of you,  
05:10:34 4 so I'd like you to refer to it. So bear with me, if you  
05:10:37 5 would.

05:11:11 6 MR. O'KELLY: May I approach, Your Honor?

05:11:12 7 THE COURT: Yes.

05:11:20 8 THE WITNESS: Thank you.

05:11:21 9 MR. O'KELLY: Sure.

05:11:22 10 BY MR. O'KELLY:

05:11:22 11 Q. Mr. Zaal, if you would, just take a moment and look  
05:11:28 12 through that, and I'll ask you some questions. Do you  
05:11:32 13 recognize that document marked as Plaintiff's 8?

05:11:34 14 A. I do.

05:11:35 15 Q. Can you tell me what it is?

05:11:36 16 A. It's the declaration of Rene Zaal.

05:11:43 17 Q. Thank you, sir. I'd like to direct your attention,  
05:11:46 18 please, to Paragraph 2 of Plaintiff's 8. Take a moment, if  
05:11:49 19 you would, and read that.

05:11:53 20 Okay. And I'm really trying to get to a more  
05:11:57 21 complete record. There's a reference in the second  
05:11:59 22 paragraph that says, "My degree is in political and  
05:12:03 23 organizational science from" that school in Amsterdam; is  
05:12:06 24 that correct?

05:12:07 25 A. That's right.

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05:12:08 1 Q. Okay. Could you state for the record the name of  
05:12:09 2 that school in Amsterdam?

05:12:11 3 A. The school in Amsterdam which is written here is the  
05:12:17 4 Vrije Universiteit Amsterdam.

05:12:18 5 Q. Thank you. I want to be sure again that the record  
05:12:22 6 is complete. That's actually not the only degree that you  
05:12:25 7 have; isn't that right?

05:12:26 8 A. I have another degree that's a degree as a sport --  
05:12:36 9 PE teacher.

05:12:36 10 Q. Okay. And so a gym teacher in sort of American  
05:12:40 11 vernacular?

05:12:40 12 A. Yeah, a long time.

05:12:41 13 Q. All right. Thank you, sir.

05:12:42 14 And to be clear, you don't have an engineering  
05:12:44 15 degree?

05:12:45 16 A. No.

05:12:45 17 Q. Correct?

05:12:47 18 A. Correct.

05:12:47 19 Q. You don't have a law degree; isn't that right?

05:12:49 20 A. No. Right.

05:12:50 21 Q. So we don't have double negatives on the record,  
05:12:53 22 that's correct that you don't have a law degree?

05:12:55 23 A. That's right.

05:12:55 24 Q. Thank you, sir. So what I'd like to do, if you  
05:12:59 25 would, is first before we move beyond that, you would agree

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05:13:06 1 with me, wouldn't you, that because you don't have a law  
05:13:08 2 degree, you're not qualified to give legal opinions; isn't  
05:13:11 3 that right?

05:13:11 4 A. You're asking my opinion? I think I stated that on  
05:13:17 5 the legal or on the technical.

05:13:19 6 What was the question?

05:13:20 7 Q. I'll be very clear. Because you don't have a law  
05:13:24 8 degree, you're not qualified to give legal opinions; isn't  
05:13:26 9 that correct?

05:13:27 10 A. That's correct.

05:13:27 11 Q. Okay. Thank you.

05:13:28 12 So what I'd like to do then is I'd have you turn  
05:13:32 13 to Page 2, particularly Paragraph 4 of your declaration.  
05:13:42 14 I'd ask that you take a look at the last sentence of  
05:13:45 15 Paragraph 4. Take a moment and read that, if you would.

05:13:45 16 A. (Witness reviewing.)

05:13:50 17 Q. Okay. In particular, I'm drawing your attention to  
05:13:53 18 the last clause that reads, "and such general statements do  
05:13:56 19 not establish the existence of a claim element."

05:13:59 20 Do you see that language?

05:14:00 21 A. Yes, I see that.

05:14:01 22 Q. Do you agree with me that that is a legal conclusion?

05:14:04 23 A. Well, it's difficult for me to say. I think that is  
05:14:12 24 a general and proper conclusion based on logic, and I think  
05:14:18 25 law school is also based on a lot of logic.

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05:14:22 1 Q. You think a recitation to a claim element and the  
05:14:26 2 existence of a claim element is an argument related to logic  
05:14:30 3 rather than law; is that correct?

05:14:31 4 A. It's also -- also related to logic.

05:14:35 5 Q. Why don't we take a different approach here. If I  
05:14:37 6 were to tell you that that is a legal conclusion, would you  
05:14:40 7 agree with me that you're not qualified to make a legal  
05:14:43 8 conclusion?

05:14:43 9 A. I can't answer that.

05:14:52 10 Q. Okay. I want to be clear, you already did answer  
05:14:54 11 that. I asked you if you were qualified to be making a  
05:14:57 12 legal conclusion. Your answer was no, I'm not qualified;  
05:15:00 13 correct?

05:15:00 14 A. Yes, but you still can be qualified on legal aspects  
05:15:05 15 that you can further qualify.

05:15:08 16 Q. And that may be an answer to a different question,  
05:15:10 17 but not the question I asked. So sir, what I'd like to do  
05:15:15 18 now is turn to Paragraph 6, if you would, of your  
05:15:17 19 declaration.

05:15:18 20 A. Yeah.

05:15:19 21 Q. I'd like you to look at the second sentence that  
05:15:21 22 reads, "These claims cannot be infringed." Do you see that?

05:15:24 23 A. Yeah.

05:15:27 24 Q. Okay. That's also a legal conclusion, isn't it?

05:15:30 25 A. Well, content of 16, 17, 18 and 19, and I can judge

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05:15:40 1 the content of it.

05:15:42 2 Q. I'm sorry. I didn't understand the answer.

05:15:46 3 A. I know the content, what's written in 16, 17, 18 and  
05:15:49 4 19, and I, by experience and knowledge, can make a  
05:15:53 5 conclusion about whether this is very, let's say, unlogical  
05:16:04 6 content and never existing practice technically. So I can  
05:16:12 7 judge that, I suppose.

05:16:14 8 Q. Okay. And again, that may all be true, but my  
05:16:16 9 question was: That is a legal conclusion, is it not?

05:16:23 10 THE COURT: You know, I'm not sure, Mr. Kelly,  
05:16:26 11 that arguing with the witness about what is or is not a  
05:16:28 12 legal conclusion -- in the end, that's something you can  
05:16:32 13 just tell me, and I'll know whether it is or it isn't.

05:16:35 14 MR. O'KELLY: Thank you, Your Honor. Maybe  
05:16:36 15 that's the easier way to do this. Your Honor, I would  
05:16:39 16 submit that throughout Mr. Zaal's eight paragraph --

05:16:44 17 THE COURT: Well, so let's do that later.

05:16:46 18 Mr. Zaal is here. There's another witness. Let's try to  
05:16:49 19 get through the witnesses.

05:16:50 20 MR. O'KELLY: Yes, Your Honor. Yes, indeed.

05:16:54 21 BY MR. O'KELLY:

05:16:54 22 Q. Mr. Zaal, what I'd like to do is mark as Plaintiff's  
05:16:58 23 Exhibit 9. If you give me just a moment, I'd like to hand  
05:17:01 24 that up to you.

05:17:21 25 MR. O'KELLY: May I approach, Your Honor?

Zaal - Cross

05:17:22 1 THE COURT: Sure.

05:17:25 2 THE WITNESS: Thank you.

05:17:26 3 BY MR. O'KELLY:

05:17:26 4 Q. Mr. Zaal, if you could, take a moment and look  
05:17:40 5 through Plaintiff's Exhibit 9. Let me know when you've read  
05:17:43 6 through it.

05:17:57 7 Have you read through it?

05:17:57 8 A. Well, not fully, but I know. I guess, you want me --  
05:18:02 9 to give me time so I can read it?

05:18:04 10 Q. Why don't we just move things along. Do you  
05:18:06 11 recognize this document?

05:18:07 12 A. Yes, I do.

05:18:08 13 Q. Okay. Can you tell the Court what that is?

05:18:10 14 A. This is a press release that informs the market that  
05:18:21 15 MOSO separates from Dasso Group.

05:18:26 16 Q. All right. Excuse me just one minute.

05:18:42 17 All right. Mr. Zaal, you will agree with me  
05:18:44 18 that the document that I handed you that's marked as  
05:18:49 19 Plaintiff's 9 is dated November 29th, 2018; correct?

05:18:52 20 A. That's correct.

05:18:54 21 Q. Okay. And if you turn to Page 2 of that exhibit,  
05:18:58 22 you'll see at the bottom it references Brett Kelly, CEO of  
05:19:04 23 MOSO North America.

05:19:05 24 Do you see that?

05:19:06 25 A. I see that.

Zaal - Cross

05:19:07 1 Q. Now, I understood from your testimony earlier that  
05:19:12 2 MOSO Bamboo X-Treme products are made in several different  
05:19:15 3 factories; is that correct?

05:19:16 4 A. That's right.

05:19:18 5 Q. Okay. I'd like to direct your attention to about  
05:19:23 6 halfway down the first paragraph. I'd like you to find the  
05:19:27 7 sentence that starts with, "MOSO will continue the  
05:19:29 8 production."

05:19:30 9 Do you see that sentence?

05:19:31 10 A. Yeah.

05:19:32 11 Q. Okay. And for the record, MOSO --

05:19:35 12 A. Wait. Wait a second. That's in the second  
05:19:48 13 paragraph?

05:19:49 14 Q. The first paragraph.

05:19:50 15 A. Oh, sorry.

05:19:51 16 Q. Roughly, halfway down. The sentence that begins  
05:19:56 17 with, "MOSO will continue the production."

05:19:58 18 A. That's right.

05:20:00 19 Q. Okay. So to be complete, the language in this  
05:20:04 20 paragraph in this sentence reads, "MOSO will continue the  
05:20:07 21 production of its MOSO Bamboo X-Treme decking boards  
05:20:09 22 unchanged with its traditional production plant."

05:20:12 23 Do you see that sentence?

05:20:13 24 A. Yes.

05:20:14 25 Q. Will you agree with me that it refers to one plant,

Zaal - Cross

05:20:16 1 not two plants or several plants?

05:20:18 2 A. No, I don't agree.

05:20:19 3 Q. You don't agree? Can you tell me why it is that the  
05:20:23 4 singular word of plant suggests something more than one  
05:20:25 5 plant?

05:20:26 6 A. No. I already told you this. The MOSO Bamboo  
05:20:31 7 X-Treme products is a family of products. That's basically  
05:20:34 8 hundreds of products.

05:20:37 9 Here, it is mentioned MOSO Bamboo X-Treme  
05:20:42 10 decking products. That is one out of the family of  
05:20:46 11 products, so it is not contradiction.

05:20:49 12 Q. Okay. So I guess I want to be sure I understand.

05:20:55 13 MOSO's own press release, it says that both the MOSO Bamboo  
05:21:00 14 X-Treme decking boards, particularly this production, will  
05:21:06 15 be unchanged with its traditional production plant; correct?

05:21:10 16 So it's specifically referring to the X-Treme  
05:21:13 17 decking boards and one plant; is that correct?

05:21:15 18 A. Well, that is -- it's so far correct to hear you say  
05:21:25 19 that there is a continuity to produce and to buy the  
05:21:29 20 products in the same -- same plant. And let's say it's  
05:21:33 21 95 percent a fact.

05:21:37 22 We have several boards, decking boards, fascia  
05:21:42 23 boards, different kinds of products which has a similarity  
05:21:45 24 of the decking which we will not buy from, in this case,  
05:21:48 25 Swathka (phonetic) which was already, I don't know,

Zaal - Cross

05:21:50 1 identified use, if I'm using the right pronunciation.

05:21:54 2 So that is -- that's a company here we were  
05:21:58 3 referring to. That was the joint venture company of Dasso.  
05:22:04 4 And until more or less this period of time, August 2018,  
05:22:09 5 Dasso Group was 51 percent owner of that company, and we  
05:22:15 6 continued, like we stated, to buy. Thereafter, they split.

05:22:23 7 Q. All right. Sir, I'd ask you to move down to the  
05:22:26 8 second paragraph, and in particular, I'd like you to read  
05:22:28 9 the first sentence. Let me know when you've done that.

05:22:31 10 A. (Witness reviewing.) Okay.

05:22:36 11 Q. Okay. You will agree with me, won't you, that that  
05:22:40 12 sentence reads, "In the future, MOSO will manufacture Bamboo  
05:22:44 13 X-Treme decking boards in the same sustainably certified  
05:22:47 14 quality in the existing production plant"; correct?

05:22:51 15 A. Yeah, that's correct.

05:22:51 16 Q. Again, no reference to multiple plants. No reference  
05:22:54 17 to two plants, more than one. No reference to any of that,  
05:22:57 18 just one plant; correct?

05:22:58 19 A. I'm sorry. I don't see a contradiction. We continue  
05:23:01 20 to produce in the same plant also in the future, so I think  
05:23:06 21 it's a matter of close reading.

05:23:08 22 Q. I see. Does MOSO sell anything other than decking in  
05:23:12 23 the United States?

05:23:13 24 A. We do, but a small amount.

05:23:18 25 Q. What in particular?

## Zaal - Redirect

05:23:19 1 A. It can be furniture blocks. It can be certain  
05:23:24 2 accessories.

05:23:26 3 Q. I'm sorry. What was the last part? I didn't hear  
05:23:28 4 you.

05:23:28 5 A. Accessories. Smaller components.

05:23:31 6 Q. Accessories.

05:23:33 7 MR. O'KELLY: Thank you, sir. I appreciate it.

05:23:35 8 That's all I have, Your Honor.

05:23:35 9 THE COURT: Anything further, Ms. Gentry?

05:23:39 10 MS. GENTRY: Just one question. Thank you, Your  
05:23:39 11 Honor.

05:23:43 12 REDIRECT EXAMINATION

05:23:43 13 BY MS. GENTRY:

05:23:47 14 Q. Mr. Zaal, how many years of experience in bamboo  
05:23:50 15 production do you have?

05:23:52 16 A. Well, at least the time that I worked and established  
05:23:58 17 MOSO, but even before that from 1994. So 25 years.

05:24:02 18 MS. GENTRY: Thank you very much, Mr. Zaal.

05:24:04 19 Nothing further, Your Honor.

05:24:05 20 Thank you.

05:24:06 21 MR. O'KELLY: Your Honor, I'd just like to move  
05:24:08 22 into evidence the exhibits that I handed to Mr. Zaal.

05:24:11 23 THE COURT: Okay. That's fine.

05:24:12 24 MR. O'KELLY: Plaintiff's Exhibits 8 and 9.

05:24:14 25 THE COURT: I think, Mr. Zaal, you may step

Kelly - Direct

05:24:16 1 down. Watch your step. Okay. And leave them there.

05:24:19 2 THE WITNESS: Yeah. Thank you.

05:24:19 3 (Plaintiff's Exhibit Nos. P8 and P9 were

05:24:36 4 admitted into evidence.)

05:24:36 5 MS. GENTRY: Your Honor, defendants would like  
05:24:37 6 to call Mr. Brett Kelly as a fact witness.

05:24:40 7 THE COURT: Okay.

05:24:41 8 MS. GENTRY: Thank you.

05:24:54 9 COURT CLERK: Would you like to swear or affirm?

05:24:56 10 THE WITNESS: Swear.

05:24:56 11 COURT CLERK: State and spell your name for the  
05:24:59 12 record.

05:24:59 13 THE WITNESS: Brett Kelly. B-R-E-T-T K-E-L-L-Y.

05:25:02 14 COURT CLERK: Please place your left hand on the  
05:25:05 15 Bible and raise your right hand.

05:25:05 16 Brett Kelly, after having been duly sworn under  
05:25:14 17 oath, was examined and testified as follows:

05:25:14 18 COURT CLERK: You may take the stand.

05:25:17 19 DIRECT EXAMINATION

05:25:17 20 BY MS. GENTRY:

05:25:23 21 Q. Mr. Kelly, please introduce yourself to the Court.

05:25:25 22 A. My name is Brett Kelly.

05:25:28 23 Q. Where are you employed, Mr. Kelly?

05:25:30 24 A. MOSO North America.

05:25:31 25 Q. And how long have you been employed there?

Kelly - Direct

05:25:33 1 A. Since its inception in 2017.

05:25:36 2 Q. What is your position at MOSO NA?

05:25:38 3 A. CEO.

05:25:40 4 Q. And what does MOSO NA do?

05:25:42 5 A. MOSO NA is a subsidiary of MOSO International, and we

05:25:47 6 sell bamboo building products.

05:25:51 7 Q. As MOSO NA's CEO, are you familiar with MOSO NA's

05:25:54 8 day-to-day operations as to just sales?

05:25:58 9 A. Yes.

05:25:58 10 Q. What is MOSO NA's key product?

05:26:02 11 A. Bamboo X-Treme.

05:26:03 12 Q. And why is it its key product?

05:26:05 13 A. The company was set up to move into the exterior

05:26:11 14 building products market. Based on our experience and it

05:26:14 15 being the primary product of MOSO International, it was the

05:26:17 16 clear choice as the lead when we started MOSO North America.

05:26:22 17 Q. Where were you employed prior to your employment with

05:26:24 18 MOSO North America?

05:26:26 19 A. I was an independent contractor for Easoon.

05:26:31 20 Q. And in what period of time were you an independent

05:26:35 21 contractor for Easoon?

05:26:36 22 A. I believe 2014 through 2017.

05:26:42 23 Q. And what was your position at Easoon USA?

05:26:45 24 A. My position was an independent contractor. I held

05:26:49 25 titles in the product line of DassoXTR.

Kelly - Direct

05:26:53 1 Q. And what kind of titles did you hold at Easoon, LLC  
05:27:02 2 or Easoon USA, LLC?

05:27:04 3 A. I was a sales manager. I think I might have been  
05:27:08 4 national sales manager, president. And then at the end, I  
05:27:14 5 was given a title of director of business development for  
05:27:18 6 Dasso Group.

05:27:21 7 Q. Okay. So did you hold a title of president of  
05:27:27 8 Easoon?

05:27:27 9 A. No.

05:27:29 10 Q. So what kind of title did you actually hold?

05:27:32 11 A. There were nomenclature for the business cards to  
05:27:36 12 help me open doors as I was leading the sales effort.

05:27:39 13 Q. Okay. Were your responsibilities at Easoon strictly  
05:27:45 14 sales related?

05:27:46 15 A. Yes.

05:27:50 16 Q. So how would you describe your job duties at Easoon  
05:27:55 17 USA?

05:27:55 18 A. Going out to the market, educating the market on the  
05:28:00 19 product line, using years of experience in my network in  
05:28:07 20 resources to open doors and try to get people to look at  
05:28:10 21 that, and along the lines of just being the voice out there  
05:28:15 22 selling.

05:28:16 23 Q. Did you have any managerial responsibility at Easoon?

05:28:21 24 A. No, I did not.

05:28:21 25 Q. Did you independently supervise any employees at

Kelly - Direct

05:28:25 1 Easoon?

05:28:25 2 A. No, I did not.

05:28:26 3 Q. Were you involved in any financial or planning

05:28:28 4 decisions at Easoon?

05:28:29 5 A. No, I was not.

05:28:31 6 Q. Did you advise any of Easoon's officers or directors?

05:28:36 7 A. I gave opinions on market data, but not a formal

05:28:40 8 advisory position.

05:28:41 9 Q. Did you hold a position of an officer at Easoon?

05:28:44 10 A. No, I did not.

05:28:45 11 Q. Did you hold a position of a director at Easoon?

05:28:47 12 A. No, I did not.

05:28:49 13 Q. What are MOSO NA's direct competitors in the U.S.

05:28:53 14 market with respect to the distribution of bamboo flooring?

05:28:57 15 A. Easoon.

05:29:00 16 Q. Okay. And from the inception of MOSO in 2017, how

05:29:07 17 many customers, based on your knowledge, left Easoon and

05:29:12 18 joined MOSO?

05:29:13 19 A. Three or four.

05:29:17 20 Q. And when was that?

05:29:18 21 A. 2018 maybe. I know in 2017, we had sales from common

05:29:28 22 customers, but I would say the bulk, if they would come

05:29:32 23 over, would be 2018.

05:29:34 24 Q. Okay. Has any customer, based on your knowledge,

05:29:36 25 left Easoon after the plaintiffs filed their motion for

Kelly - Direct

05:29:40 1 preliminary injunction in November of 2018?

05:29:42 2 A. Not to the best of my knowledge.

05:29:44 3 Q. What about the other way around, have any customers  
05:29:46 4 left MOSO and joined Easoon?

05:29:49 5 A. Yes.

05:29:51 6 Q. How many?

05:29:51 7 A. One.

05:29:53 8 Q. Okay. Was it a big customer?

05:29:55 9 A. Yes, it was. It was Disdero Lumber, our distributor  
05:29:59 10 in the Pacific Northwest.

05:30:01 11 Q. Were there customers or are there customers that sell  
05:30:04 12 both Easoon and MOSO products?

05:30:05 13 A. I'm sure there are. Yes.

05:30:10 14 Q. Did you enter into a non-compete agreement while you  
05:30:14 15 were employed by Easoon?

05:30:15 16 A. No, I did not.

05:30:18 17 Q. Is MOSO NA now actively pursuing Easoon's customers?

05:30:22 18 A. Not that I'm aware of.

05:30:24 19 Q. What will happen to MOSO if this injunction is  
05:30:29 20 granted?

05:30:29 21 A. It would be -- it would be devastating. The  
05:30:33 22 reputational harm would be very hard to overcome. Through  
05:30:39 23 press releases and messages from Dasso Group, Easoon, MOSO  
05:30:44 24 North America has been accused of counterfeiting, and  
05:30:48 25 allowing the injunction would almost give credence to that.

Kelly - Direct

05:30:53 1 Q. And what do you think will happen to Easoon after the  
05:30:55 2 injunction is granted if the injunction is granted?

05:30:57 3 A. I think they would suffer, too.

05:31:00 4 Q. Why do you think so?

05:31:03 5 MR. HOOPES: Objection, Your Honor.

05:31:05 6 Speculation.

05:31:05 7 THE COURT: Yeah. Well, you know, so why  
05:31:11 8 doesn't he answer the question. I reserve the right to  
05:31:13 9 strike it because I think there may be some merit to the  
05:31:16 10 objection.

05:31:16 11 Go ahead, Mr. Kelly.

05:31:18 12 THE WITNESS: Certainly our product is warranted  
05:31:20 13 for longer, 25 years in the residential market. Also,  
05:31:25 14 worked for 15 years longer in the commercial market.  
05:31:28 15 Additionally, we have a certification in one particular  
05:31:31 16 market that Easoon does not have that has a lot of value to  
05:31:33 17 the state. Additionally, we were told through distribution  
05:31:37 18 customers that representatives --

05:31:39 19 MR. HOOPES: Objection, Your Honor. Hearsay.

05:31:41 20 THE COURT: Well, I think this may have merit,  
05:31:43 21 too, but go ahead, Mr. Kelly.

05:31:45 22 THE WITNESS: Thank you. That representatives  
05:31:47 23 of DassoXTR had informed downstream customers had they not  
05:31:52 24 stopped buying product from MOSO that DassoXTR would find a  
05:31:58 25 way around and sell to their customers directly. That kind

Kelly - Direct

05:32:01 1 of conversation, those things in the field means that if we  
05:32:06 2 go out of business, our customers won't go to Easoon. They  
05:32:09 3 would stop selling the product, which means less attention  
05:32:13 4 in the market and less saleability and bad things.

05:32:13 5 BY MS. GENTRY:

05:32:18 6 Q. So what will that mean for the market?

05:32:21 7 A. The market is not comfortable with single-supplier  
05:32:25 8 sources in anything. I think that it's just sloppy, and I  
05:32:30 9 don't think that the -- I just don't think our customers  
05:32:35 10 will go back over. I think our customers are our customers.  
05:32:38 11 I think Easoon's customers are Easoon's customers. And I  
05:32:41 12 think the market is better with both of us being present.

05:32:45 13 Q. Are you now actively pursuing any of Easoon's  
05:32:47 14 customers?

05:32:48 15 A. No, I'm not.

05:32:49 16 MS. GENTRY: Thank you. Nothing further.

05:32:51 17 THE COURT: All right. And just in terms of the  
05:32:53 18 two objections, the first one that was followed by a bunch  
05:32:58 19 of statements that I do not think were speculative. They  
05:33:01 20 were things he is in a position to know, so I'm not going to  
05:33:05 21 strike those.

05:33:06 22 The second one which was sort of the hearsay  
05:33:10 23 based, that seemed to me to be too much hearsay based, and  
05:33:14 24 so the hearsay statement itself and the direct follow-on, I  
05:33:22 25 will strike that and not consider that in making a ruling

Kelly - Cross

05:33:26 1 here.

05:33:26 2 All right?

05:33:27 3 MS. GENTRY: Thank you.

05:33:27 4 THE COURT: Go ahead, Mr. Hoopes.

05:33:56 5 MR. HOOPES: May I approach the witness, Your  
05:33:59 6 Honor?

05:33:59 7 THE COURT: Sure.

05:33:59 8 CROSS-EXAMINATION

05:33:59 9 BY MR. HOOPES:

05:34:00 10 Q. I'm handing you what's been marked as P10,  
05:34:03 11 Plaintiff's Exhibit 10, and I'll represent to you,  
05:34:17 12 Mr. Kelly, I'm trying to -- good afternoon.

05:34:20 13 A. Good afternoon.

05:34:21 14 Q. As well, we've seen each other many times now?

05:34:23 15 A. Yes.

05:34:24 16 Q. It's good to see you. I'll represent to you that  
05:34:27 17 these are the exhibits from the deposition that you took in  
05:34:30 18 this case. If you flip through it real quick, do you have  
05:34:36 19 any reason to believe that these are not the deposition  
05:34:40 20 exhibits?

05:34:42 21 A. I believe these are the deposition exhibits. Yes.

05:34:46 22 Q. And let me approach you with what I've marked as P11.  
05:35:01 23 And do you recognize that?

05:35:02 24 A. It appears to be the transcript from my deposition.

05:35:07 25 Q. And this was in, I believe, January 2019, this year?

Kelly - Cross

05:35:11 1 A. Yes, January 22nd.

05:35:16 2 Q. And so looking at P10 that I handed to you, the  
05:35:24 3 declaration --

05:35:24 4 A. Yes.

05:35:25 5 Q. -- first of all, let's look at Paragraph 3, in this  
05:35:33 6 paragraph. And I believe you had testified moments ago that  
05:35:38 7 your job duties as the president of DassoXTR were strictly  
05:35:44 8 related to sales; is that fair to say?

05:35:46 9 A. That is correct.

05:35:53 10 Q. If you look at your declaration or P10, if you turn  
05:36:02 11 to what's identified in the bottom, you see those EASOON  
05:36:07 12 numbers at the bottom, the Bates numbers?

05:36:10 13 A. Yes.

05:36:10 14 Q. If you could turn to EASOON 612. And again, this was  
05:36:19 15 an exhibit that we talked about in your deposition, and this  
05:36:22 16 was a copy of your LinkedIn page. Do you recall that?

05:36:26 17 A. Yes.

05:36:29 18 Q. And if you'll look at the second page of your  
05:36:32 19 LinkedIn page, it identifies at least two different  
05:36:37 20 positions that you held with DassoXTR or Dasso USA from the  
05:36:43 21 time that you were with Easoon; is that correct?

05:36:46 22 A. That would be correct. Yes.

05:36:48 23 Q. Okay. And the very first position, so if you go down  
05:36:53 24 to the bottom one, because I guess they're in order. So the  
05:36:57 25 bottom one is -- it says December 2012 to January 2017. And

Kelly - Cross

05:37:03 1 I believe in your deposition, you corrected that and said  
05:37:05 2 that that was an error. It shouldn't have been in 2012.

05:37:09 3 Correct?

05:37:09 4 A. That is correct.

05:37:10 5 Q. And you were in the courtroom earlier when Mr. Chua  
05:37:15 6 was testifying, and he was testifying concerning the time  
05:37:19 7 that you started employment or being engaged by Easoon being  
05:37:24 8 2013. Do you recall that?

05:37:26 9 A. Yes, that is correct.

05:37:28 10 Q. Okay. So between 2013 and 2017, is it okay to  
05:37:34 11 assume, based on your LinkedIn page, that you held the title  
05:37:38 12 of president of DassoXTR?

05:37:40 13 A. Sure.

05:37:41 14 Q. Okay. And in fact, your testimony earlier is you  
05:37:46 15 were strictly just sales related. And I believe your  
05:37:51 16 testimony was you were just an independent contractor. You  
05:37:54 17 had no reporting. You had nobody under you. You didn't  
05:37:57 18 manage anybody.

05:38:00 19 Can you read the description there under the  
05:38:03 20 president of DassoXTR for four years?

05:38:06 21 A. Sure. "Introducing DassoXTR Fused Bamboo to the  
05:38:11 22 North American market, Americanization of marketing and  
05:38:14 23 website materials. Develop sales staff and training  
05:38:17 24 materials, implement warehouses and inventory management  
05:38:20 25 systems. Develop commercial business through specification."

Kelly - Cross

05:38:24 1 Introduction of the product has also led to the  
05:38:29 2 contract for developing North American market for Carver  
05:38:32 3 finishes in Italy.

05:38:33 4 Developing sales distribution in Mexico, Canada  
05:38:33 5 and Australia have been added to responsibility for  
05:38:33 6 DassoXTR."

05:38:36 7 Q. And then going up to the "Director of New Business  
05:38:41 8 Development" for Easoon through Dasso USA, this is your  
05:38:45 9 LinkedIn page. It says that you held a position from  
05:38:48 10 January 2017 to June 2017.

05:38:51 11 Is that correct?

05:38:51 12 A. That is correct.

05:38:53 13 Q. Okay. And can you read what you've put on your  
05:38:55 14 LinkedIn page as far as your description?

05:38:57 15 A. Sure. "Head Business Development efforts for all of  
05:39:00 16 Dasso Group's products and services in North America. Areas  
05:39:04 17 of concentration will be in office and home furnishings,  
05:39:06 18 housewares container and truck flooring, as well as  
05:39:12 19 expanding current DassoXTR customer base."

05:39:13 20 Q. And so during this time period and looking at what's  
05:39:17 21 on your LinkedIn page, is it your testimony that you were  
05:39:22 22 strictly just an outside sales guy, or were you more of an  
05:39:25 23 integral part of introducing and growing the DassoXTR  
05:39:31 24 product in the U.S. for Easoon?

05:39:33 25 A. I was an integral part of growing Dasso as an outside

Kelly - Cross

05:39:37 1 sales rep.

05:39:43 2 Q. And so what type of services did you provide in  
05:39:48 3 developing, integrating, introducing, and growing the  
05:39:52 4 DassoXTR product in the U.S.?

05:39:54 5 A. I'm sorry. I don't understand what you're asking me.

05:39:57 6 Q. What did your services entail when you were in there  
05:40:00 7 between 2013 to June 2017? What were the types of services  
05:40:06 8 that you provided to introduce, Americanize, integrate, and  
05:40:13 9 grow the DassoXTR brand in the United States for Easoon?

05:40:16 10 A. I was trained in the product, given some background  
05:40:20 11 knowledge, and then I used my 25 years of network as an  
05:40:24 12 industry rep to go out and present it to people in my  
05:40:27 13 network. Americanization-wise, I changed it from  
05:40:30 14 millimeters to inches. I gave recommendations on  
05:40:34 15 nomenclature.

05:40:35 16 Q. Okay. And so during the time that you were there for  
05:40:39 17 DassoXTR for four and a half -- well, let's say four years;  
05:40:43 18 is that fair?

05:40:44 19 A. Yeah.

05:40:44 20 Q. Okay. What were the sales overall every year; do you  
05:40:50 21 recall? Were the sales increasing?

05:40:52 22 A. I believe so. I never had access to sales data.

05:40:57 23 Q. Okay. So you're the president of DassoXTR, and  
05:41:03 24 you're the sales guy, but you're saying that you never had  
05:41:07 25 access to sales data?

Kelly - Cross

05:41:08 1 A. I'm saying I was an independent contractor  
05:41:11 2 responsible for sales and did not have access to sales data.  
05:41:14 3 I had a title of president which had nothing that went with  
05:41:18 4 it.

05:41:22 5 Q. So how is it that you're the president of DassoXTR --

05:41:26 6 A. That's -- DassoXTR is not a company.

05:41:29 7 Q. Can I finish --

05:41:30 8 A. Sorry.

05:41:31 9 Q. So how is it that you're in charge of the DassoXTR  
05:41:35 10 sales for four years, you identify yourself on LinkedIn as  
05:41:40 11 the president of DassoXTR and the director of new business  
05:41:45 12 development, but yet you never have any access to any of the  
05:41:50 13 sales data?

05:41:51 14 A. That is correct.

05:41:53 15 Q. Okay. Did you ever ask for the sales data?

05:41:58 16 A. No.

05:42:15 17 Q. In Paragraph 4, going back to your declaration, you  
05:42:20 18 say Easoon's customer list was stored in a customer database  
05:42:24 19 owned by TW Flooring Group, and that TW Flooring Group  
05:42:28 20 shared that database with Easoon and other companies.

05:42:31 21 Do you see that?

05:42:31 22 A. Yes.

05:42:35 23 Q. And do you recall during your deposition we discussed  
05:42:38 24 a software database called Zoho?

05:42:43 25 A. Yes.

Kelly - Cross

05:42:44 1 Q. And can you tell the Court what Zoho is?

05:42:46 2 A. It's a database.

05:42:50 3 Q. Okay. Is it a database of customers -- of sales of  
05:42:54 4 perspective customer opportunities?

05:42:56 5 A. Database of perspective customers.

05:43:01 6 Q. Okay. And that was maintained by TW Flooring Group?

05:43:04 7 A. Yes, that is correct.

05:43:06 8 Q. Okay. In the declaration in Paragraph 4, you were  
05:43:11 9 saying that Easoon's customer list was stored in a customer  
05:43:15 10 database owned by TW Flooring Group?

05:43:18 11 A. Yes.

05:43:18 12 Q. Was that their existing customers or their  
05:43:20 13 perspective customers through the Zoho?

05:43:22 14 A. That was perspective.

05:43:24 15 Q. Okay. So if they are perspective customers, they're  
05:43:29 16 not customers at the time; correct?

05:43:31 17 A. Correct.

05:43:32 18 Q. So your declaration that you're saying that Easoon's  
05:43:34 19 customers list was stored in a customer database owned by TW  
05:43:40 20 Flooring Group and shared with other companies, that wasn't  
05:43:42 21 Easoon's existing customers; correct?

05:43:43 22 A. I don't know how many of them would have -- were  
05:43:47 23 Easoon's existing customers or not.

05:43:49 24 Q. Okay. But your testimony just a moment ago was that  
05:43:52 25 the Zoho database was perspective customers; correct?

Kelly - Cross

05:43:56 1 A. Correct. Yes.

05:43:57 2 Q. Okay. So but your declaration doesn't say Easoon's  
05:44:00 3 perspective customers, it specifically says Easoon's  
05:44:03 4 customer list was stored by, you know, TW Flooring Group and  
05:44:09 5 then shared with other companies. So that's not necessarily  
05:44:12 6 a true statement, would you agree?

05:44:13 7 A. Which one?

05:44:15 8 Q. The representation that you've made to the Court in  
05:44:18 9 your declaration that Easoon's customer list was stored in a  
05:44:22 10 customer database owned by TW Flooring Group and shared with  
05:44:26 11 Easoon and other companies?

05:44:27 12 A. You're right. I should have said perspective  
05:44:29 13 customer base.

05:44:33 14 Q. In Paragraph 5 of your declaration, you put "Easoon's  
05:44:37 15 price list was widely known between its contractors and  
05:44:41 16 customers through publicly available price sheets."

05:44:44 17 Do you see that?

05:44:45 18 A. Yes.

05:44:47 19 Q. Is it your testimony that these publicly-available  
05:44:51 20 price sheets represented Easoon's fixed pricing?

05:44:54 21 A. I have -- I don't understand what you mean by fixed  
05:45:00 22 pricing. I said Easoon's price lists were widely known  
05:45:04 23 through its contract customer base and publicly available  
05:45:08 24 from price branches. I don't understand what you mean by  
05:45:10 25 fixed.

Kelly - Cross

05:45:12 1 Q. Fair enough. Those price sheets that are publicly  
05:45:14 2 available and known to contractors and customers, is that  
05:45:19 3 actually the final end price that's negotiated with a  
05:45:22 4 customer to get their business?

05:45:24 5 A. I have no idea. I have no idea.

05:45:38 6 Q. Okay. Turn to P11, your deposition transcript. If  
05:45:50 7 you can look at -- it's probably easier to look at the Bates  
05:45:53 8 number, EASOON 581, and it's Page 53 of your deposition  
05:46:05 9 transcript.

05:46:05 10 A. Okay.

05:46:08 11 Q. Are you there?

05:46:08 12 A. Yes.

05:46:17 13 Q. So I asked you in your deposition starting on Line 9,  
05:46:21 14 I said, "Okay. So were there times that you had to contact  
05:46:24 15 a customer who had the price list, but then negotiate a  
05:46:29 16 better price in order to win the business or the project?"

05:46:31 17 A. Oh, I'm sorry, yes.

05:46:33 18 Q. Yes?

05:46:33 19 A. Yes. I didn't understand the way you asked the  
05:46:36 20 question the first time.

05:46:37 21 Q. Okay. And so --

05:46:38 22 A. You're referring to price page --

05:46:39 23 Q. So your answer was, "Oh, I'm sure there were." Okay.

05:46:44 24 MS. GENTRY: Objection, Your Honor. Improper  
05:46:47 25 impeachment.

Kelly - Cross

05:46:48 1 THE COURT: I'm not sure this is actually  
05:46:50 2 impeachment at this point, so much as trying to draw out  
05:46:55 3 testimony. But if it is impeachment, I don't think it's  
05:47:01 4 improper. So go ahead.

05:47:03 5 BY MR. HOOPES:

05:47:03 6 Q. Okay. So you admitted in your deposition that there  
05:47:07 7 were actually times where, yes, that the end price would be  
05:47:12 8 a negotiated price that wasn't the generally circulated or  
05:47:17 9 known customer price sheet?

05:47:20 10 A. Yes.

05:47:21 11 Q. Okay. But in your declaration, under five,  
05:47:29 12 Paragraph 5, you put "Easoon's price list was widely known  
05:47:34 13 between its contractors and customers through publicly  
05:47:38 14 available price sheets."

05:47:39 15 Do you recall?

05:47:39 16 A. Yes.

05:47:39 17 Q. At no point in your declaration did you say, however,  
05:47:42 18 that wasn't actually the end result of the negotiated deal,  
05:47:47 19 those were just general price sheets that were circulated;  
05:47:51 20 correct?

05:47:51 21 A. Yes.

05:47:54 22 Q. Under Paragraph 7, do you recall in May of 2017 where  
05:48:05 23 you had a scheduled trip to China to meet with Easoon's  
05:48:11 24 customers over in China?

05:48:12 25 A. Yes.

Kelly - Cross

05:48:16 1 Q. In Paragraph 7 of your declaration, you say, "Easoon  
05:48:19 2 did not pay my expenses to fly to the Netherlands as part of  
05:48:23 3 a trip to China in 2017."

05:48:26 4 Do you see that?

05:48:27 5 A. Yes.

05:48:27 6 Q. And is that a true statement?

05:48:28 7 A. Yes, it is.

05:48:29 8 Q. In fact, that's a very true statement; correct?

05:48:32 9 A. Yes.

05:48:32 10 Q. Okay. And during your deposition when we discussed  
05:48:37 11 this, who was it that actually paid for your trip to go from  
05:48:40 12 the U.S. to the Netherlands and then from the Netherlands to  
05:48:45 13 China?

05:48:45 14 A. MOSO North America or MOSO International.

05:48:49 15 Q. MOSO International. And in your deposition, I had  
05:48:51 16 asked you if you had told Avery or anybody at Easoon that  
05:48:57 17 you were stopping by the Netherlands to meet with MOSO at  
05:49:02 18 their international headquarters.

05:49:03 19 Do you recall that?

05:49:04 20 A. I do.

05:49:04 21 Q. And did you tell Avery, or Easoon, or anybody that  
05:49:07 22 you were stopping by MOSO B.V.'s international headquarters?

05:49:12 23 A. No.

05:49:13 24 Q. And in fact, were you there to discuss MOSO and  
05:49:18 25 Easoon? Since you were still the president of DassoXTR and

Kelly - Cross

05:49:22 1 under contract with Easoon, were you there to discuss a  
05:49:25 2 joint business or perspective business between Easoon and  
05:49:28 3 MOSO?

05:49:28 4 A. No, and I was not the president of DassoXTR when I  
05:49:34 5 was there. I was doing development for Dasso Group.

05:49:36 6 Q. New business development?

05:49:38 7 A. For Dasso Group.

05:49:39 8 Q. For Dasso Group?

05:49:40 9 A. In China, yes.

05:49:41 10 Q. Okay. Where does it say Dasso Group? Your LinkedIn  
05:49:47 11 page says Dasso USA.

05:49:48 12 A. I was always told they were -- we were all part of  
05:49:52 13 Dasso Group. In my LinkedIn description, I write Dasso  
05:49:55 14 Group.

05:49:55 15 Q. But you don't write Dasso Group in LinkedIn, do you?

05:49:58 16 A. Dasso Group doesn't have a LinkedIn. Dasso USA at  
05:50:01 17 the time.

05:50:02 18 Q. I'm talking about your LinkedIn page.

05:50:03 19 A. Right. And I'm telling you why.

05:50:06 20 Q. Right. But all I'm asking is: You didn't say Dasso  
05:50:10 21 Group, that you're the new business developer?

05:50:12 22 A. I did.

05:50:12 23 Q. Correct?

05:50:13 24 A. If you go down through the description, it says I  
05:50:15 25 have business for Dasso Group.

Kelly - Cross

05:50:17 1 Q. And you list your title, though, director of new  
05:50:20 2 business development directly under that Dasso USA; correct?

05:50:24 3 A. Yes.

05:50:25 4 Q. Okay.

05:50:26 5 A. And then I say below head of business development,  
05:50:30 6 efforts for all of Dasso Group's products. Yes, to -- so  
05:50:33 7 Dasso Group.

05:50:33 8 Q. Not Dasso Group. You identified it as Dasso USA  
05:50:36 9 under your title; correct?

05:50:37 10 A. Okay. I identified it as Dasso USA.

05:50:39 11 Q. Okay. And during your deposition, I asked you on  
05:50:46 12 Page 62 and Page 63 -- if you'll turn to that, I asked you  
05:51:03 13 if you informed Avery and Easoon that you were going over  
05:51:16 14 there. You said, no, just as you testified.

05:51:18 15 And then I asked you: Would you have told Avery  
05:51:22 16 about conversations with MOSO about any type of a business  
05:51:26 17 opportunity? And on 63, your answer was, "Probably not."

05:51:31 18 Do you recall that?

05:51:31 19 A. Yeah.

05:51:34 20 Q. And I asked you, "Okay. Why would you have kept that  
05:51:37 21 from Avery?"

05:51:38 22 And what was your answer?

05:51:39 23 A. I'm trying to find that in the exchange.

05:51:42 24 Q. Page 63, Line 9.

05:51:45 25 A. "I don't know."

Kelly - Cross

05:51:48 1 Q. That was your answer?

05:51:49 2 A. Yeah.

05:51:49 3 Q. Why would you have kept that from Avery? You're  
05:51:52 4 there. You're under contract with Easoon?

05:51:56 5 A. I'm on my own time. I believe I took the days off.  
05:51:59 6 I filed for those three days off in vacation time before I  
05:52:02 7 went to China.

05:52:02 8 Q. But you're under contract at the time?

05:52:04 9 A. But I'm not under contract 24-7.

05:52:07 10 Q. Sir, you're under contract with Easoon at the time, a  
05:52:12 11 full-time position to help generate sales, develop business  
05:52:20 12 opportunities. And when you were asked if you would have  
05:52:25 13 told Avery about going there, you said "Probably not."

05:52:28 14 A. Yes.

05:52:28 15 Q. Correct?

05:52:29 16 A. Correct.

05:52:31 17 Q. And when did you leave your contracted agreement with  
05:52:35 18 Easoon? Do you recall when?

05:52:37 19 A. The end of May, first of June, I believe.

05:52:39 20 Q. June 14th?

05:52:40 21 A. June 14th. Okay.

05:52:45 22 Q. And again, this was in May 2017; correct?

05:52:48 23 A. What was in May?

05:52:50 24 Q. The trip.

05:52:51 25 A. The trip?

Kelly - Cross

05:52:52 1 Q. 2017?

05:52:53 2 A. Yes.

05:52:53 3 Q. In fact, if you go to EASOON 615 on P10, you identify  
05:53:14 4 yourself as being in Zwaag, Netherlands on May 5th in a  
05:53:19 5 Facebook post; right?

05:53:21 6 A. Yes.

05:53:31 7 Q. Let's go to Paragraph 9 of your declaration. You  
05:53:40 8 say, "MOSO North American recently lost the business for  
05:53:43 9 selling bamboo products to Disdero Lumber company to Easoon,  
05:53:47 10 USA, LLC in the amount of approximately \$400,000."

05:53:51 11 Do you see that?

05:53:51 12 A. Yes.

05:53:52 13 Q. Anywhere in your declaration do you say, but this is  
05:53:56 14 a customer that I took from Easoon when I left and started  
05:54:01 15 up MOSO as the president of MOSO North America?

05:54:05 16 A. No.

05:54:07 17 Q. And so when you say that you recently lost the  
05:54:10 18 business, is it your understanding that Disdero went back to  
05:54:14 19 Easoon?

05:54:14 20 A. Yes.

05:54:16 21 Q. And so this lost business opportunity was, in fact, a  
05:54:20 22 business opportunity that you took away from Easoon?

05:54:23 23 A. Okay.

05:54:24 24 Q. Correct?

05:54:25 25 A. I have -- I had the business, and then I lost the

Kelly - Cross

05:54:28 1 business. Yes.

05:54:32 2 Q. In Paragraph 10, you say, "If the Court were to grant  
05:54:36 3 Dasso's motion for preliminary injunction and stop MOSO from  
05:54:39 4 selling Bamboo X-Treme in the United States, that would be  
05:54:43 5 the end of the company."

05:54:45 6 Do you recall that?

05:54:45 7 A. Yes.

05:54:46 8 Q. Is that a true statement?

05:54:47 9 A. I believe so. Yes.

05:54:49 10 Q. Okay. Do you recall in your deposition discussing or  
05:54:54 11 testifying concerning the percent of business that MOSO  
05:54:59 12 North America does in the U.S. and in Canada?

05:55:01 13 A. That is correct.

05:55:03 14 Q. And what do you recall that percent that you told me  
05:55:05 15 of sales -- and this is just in January of this year -- what  
05:55:09 16 percent of sales between the United States and Canada?

05:55:11 17 A. For 2018, it was 60-40.

05:55:15 18 Q. 64-40?

05:55:16 19 A. (Witness nods head.)

05:55:17 20 Q. And so if the Court grants a preliminary injunction,  
05:55:20 21 you still maintain 40 percent of your DassoXTR sales up in  
05:55:25 22 Canada; correct?

05:55:25 23 A. I don't have DassoXTR sales.

05:55:27 24 Q. You're right, MOSO Bamboo X-Treme sales.

05:55:32 25 Forty percent of the company can continue to do business up

Kelly - Cross

05:55:36 1 in Canada; right?

05:55:37 2 A. You asked me about results from 2018 in the  
05:55:39 3 deposition. As of 2019, we have done zero business in  
05:55:42 4 Canada.

05:55:43 5 Q. Well, we can look at it. So Page 85 of your  
05:55:51 6 deposition transcript.

05:55:52 7 A. Yes.

05:55:53 8 Q. So do you have it in front of you?

05:55:59 9 A. Yes.

05:56:02 10 Q. And this is January of 2019.

05:56:04 11 A. Yes, so we just closed books from 2018.

05:56:07 12 Q. Okay. And I asked you on Line 9, "And what percent  
05:56:13 13 of the product can you estimate goes to the U.S. market and  
05:56:16 14 what percent goes to the Canadian market?"

05:56:20 15 Correct? Do you see that?

05:56:20 16 A. Yes.

05:56:22 17 Q. What was your answer?

05:56:23 18 A. "Maybe 60/40."

05:56:25 19 Q. U.S. to Canada?

05:56:26 20 A. Yes.

05:56:27 21 Q. So this was six months ago?

05:56:28 22 A. Yes.

05:56:29 23 Q. Okay. And if the Court enters an injunction, there's  
05:56:33 24 nothing that stops you from going all over Canada and trying  
05:56:37 25 to get sales of MOSO Bamboo X-Treme; correct?

Kelly - Cross

05:56:40 1 A. No.

05:56:42 2 Q. In fact, MOSO Bamboo X-Treme is not the only product  
05:56:47 3 that MOSO North America sells; correct?

05:56:49 4 A. Correct.

05:56:52 5 Q. In fact, you testified in your deposition that MOSO  
05:56:55 6 North America also does sales of flooring to TW Flooring  
05:57:00 7 Group; correct?

05:57:00 8 A. That's correct.

05:57:01 9 Q. It's on Page 84 of your deposition. And so in  
05:57:05 10 addition to MOSO Bamboo X-Treme up in Canada being able and  
05:57:08 11 no limitations up there, you also are in the business of  
05:57:13 12 selling other products to other customers in the U.S.?

05:57:17 13 A. But that's -- it's a minimal part of our sales. It's  
05:57:20 14 not enough to sustain the company.

05:57:25 15 Q. Okay. My question -- what I'm getting at is:  
05:57:28 16 There's nothing that stops you from actively pursuing  
05:57:31 17 customers and sales opportunities up in Canada; correct?

05:57:34 18 A. Correct.

05:57:35 19 Q. And there's nothing that would prevent you from  
05:57:37 20 selling other types of products. Mr. Zaal testified that  
05:57:40 21 there's dozens of products in up to ten factories being  
05:57:48 22 produced all the over the place. They have this huge  
05:57:50 23 product line.

05:57:50 24 There's nothing that would stop you from selling  
05:57:52 25 those other products to customers in the United States;

Kelly - Cross

05:57:55 1 correct?

05:57:56 2 A. No.

05:58:02 3 Q. In Paragraph 11, you make a statement that you say,  
05:58:07 4 "Granting the preliminary injunction might also mean the  
05:58:10 5 death knell for Easoon. Customers would not go back to  
05:58:14 6 Easoon, but rather would stop selling the category."

05:58:16 7 Do you see that?

05:58:17 8 A. Yes.

05:58:25 9 Q. When I asked you about that on Page 87 of your  
05:58:28 10 deposition, I asked you what you were basing that statement  
05:58:32 11 on.

05:58:34 12 THE COURT: Didn't we already hear that here?

05:58:36 13 THE WITNESS: Yeah.

05:58:42 14 THE COURT: Didn't you ask me to strike it?

05:58:44 15 Maybe not you, but somebody did.

05:58:46 16 MS. GENTRY: Yes.

05:58:47 17 MR. HOOPES: No, my question is: What are you  
05:58:49 18 basing that statement in your declaration on?

05:58:52 19 THE COURT: Okay.

05:58:53 20 MR. HOOPES: Is it personal experience, or does  
05:58:54 21 he have any other information or knowledge specifically out  
05:58:57 22 there concerning that statement in his declaration?

05:59:01 23 THE WITNESS: I did. I gave that answer to Eve.

05:59:01 24 BY MR. HOOPES:

05:59:04 25 Q. Okay. Correct.

Kelly - Cross

05:59:04 1 When I asked you in your deposition, your  
05:59:09 2 response on Page 88 of your deposition was, well -- and we  
05:59:14 3 were talking about Disdero.

05:59:17 4 A. Okay.

05:59:18 5 Q. And I said, What evidence do you have concerning that  
05:59:22 6 statement, and you said, "it's my opinion based on  
05:59:25 7 experience and the circumstances."

05:59:27 8 Correct?

05:59:27 9 A. Page 88?

05:59:30 10 Q. Yeah, top of Page 88. Actually if you go to the top  
05:59:34 11 of Page 87, I specifically asked you what you were basing  
05:59:38 12 the statement on at the end of 86, top of Page 87.

05:59:41 13 A. Yes, but I said, It's my opinion based on experience  
05:59:43 14 and circumstances.

05:59:45 15 Q. Right. So I asked specifically -- I said what are  
05:59:48 16 you basing the statement from in Paragraph 11, and your  
05:59:52 17 answer was "my experience and my opinion in the industry."

05:59:56 18 A. And I gave more detail to that.

05:59:58 19 Q. Correct. I'm asking you about the deposition.

06:00:00 20 A. Okay. I don't remember the deposition. It was six  
06:00:03 21 months ago.

06:00:04 22 Q. Okay. Well, that's why we have it in front of us.

06:00:06 23 A. Okay.

06:00:06 24 Q. I specifically asked you about Paragraph 11. I said,  
06:00:10 25 "Where are you basing this statement from?" And what --

Kelly - Cross

06:00:12 1 A. I answered that.

06:00:13 2 Q. What was the answer at the top of 87?

06:00:16 3 A. My answer at the top of 87? Okay. Eighty-seven or

06:00:20 4 88?

06:00:21 5 Q. Eighty-seven, very top line, 1 and 2?

06:00:23 6 A. "My experience and my opinion is in the industry."

06:00:26 7 Q. Correct. And at no point then did you provide

06:00:30 8 additional information, evidence, anything else. You just

06:00:33 9 said I'm basing Paragraph 11 on my experience and my opinion

06:00:38 10 in the industry; correct?

06:00:40 11 A. I wasn't asked for anything else.

06:00:43 12 Q. Okay. All right. We'll move on.

06:00:46 13 THE COURT: So Mr. Hoopes, let's move to an end

06:00:48 14 here.

06:00:49 15 MR. HOOPES: That's where I'm at, Your Honor.

06:00:54 16 BY MR. HOOPES:

06:00:54 17 Q. Do you recall when this declaration was given? If

06:00:57 18 you go to EASOON 611.

06:01:03 19 A. Yes.

06:01:04 20 Q. And what is the date?

06:01:05 21 A. 12/11/18.

06:01:07 22 Q. December 11th, 2018; correct?

06:01:09 23 A. Yes.

06:01:10 24 Q. And you made a representation in this declaration

06:01:14 25 that customers would not go back to Easoon; correct?

Kelly - Cross

06:01:17 1 A. Correct.

06:01:19 2 Q. However, you testified in your deposition, and you  
06:01:25 3 said it here today that Disdero went back to Easoon;  
06:01:30 4 correct?

06:01:31 5 A. Yes.

06:01:32 6 Q. Okay. And so I asked you, so prior to Disdero going  
06:01:37 7 back to Easoon, your understanding was if MOSO was stopped  
06:01:41 8 by the Court from selling the product, that Disdero wouldn't  
06:01:43 9 go back to Easoon; correct?

06:01:47 10 When did Disdero leave and go back to Easoon; do  
06:01:50 11 you remember?

06:01:50 12 A. Before -- this statement was before the declaration.

06:01:59 13 Q. Okay. And the declaration was December; correct?

06:02:00 14 A. Yes. We were informed in November.

06:02:09 15 Q. Okay. So you are already informed in November that  
06:02:12 16 Disdero was switching and going back to Easoon; correct?

06:02:15 17 A. Correct, which I covered in my statement.

06:02:17 18 Q. Okay. In your statement, though, you say if the  
06:02:21 19 Court -- that customers would not go back to Easoon, but  
06:02:25 20 rather stop selling the category completely; correct?

06:02:28 21 A. Yes.

06:02:29 22 Q. However, just a month prior, one of your biggest  
06:02:32 23 customers actually did, in fact, go back to Easoon; correct?

06:02:35 24 A. Correct.

06:02:36 25 Q. So are you basing this on the rest of the customers?

Kelly - Cross

06:02:41 1 A. Yeah. I never said all of the customers wouldn't go  
06:02:44 2 back. I said customers, so yeah, I'm basing it on the rest  
06:02:48 3 of them.

06:02:48 4 Q. Okay. And no reference there, though, except  
06:02:53 5 Disdero; correct?

06:02:54 6 A. Except for -- you've totally lost me.

06:02:59 7 Q. There's no reference in Paragraph 11 to Disdero  
06:03:01 8 having left and having switched back to Easoon just a month  
06:03:05 9 prior; correct?

06:03:05 10 A. No, right.

06:03:11 11 Q. In your testimony --

06:03:12 12 MR. HOOPES: This is my last question, Your  
06:03:12 13 Honor.

06:03:12 14 BY MR. HOOPES:

06:03:13 15 Q. In your testimony, you were specifically asked how  
06:03:20 16 many customers left and went with you to MOSO; correct?

06:03:23 17 A. Yes.

06:03:24 18 Q. And do you recall what you told the Court?

06:03:27 19 A. A handful.

06:03:28 20 Q. Three or four --

06:03:29 21 A. Yeah.

06:03:29 22 Q. -- was your testimony; correct? If you pull up  
06:03:39 23 Page 66 of your deposition testimony, 65 and 66. And 65, I  
06:03:54 24 asked you, "How many customers do you recall that left  
06:03:56 25 Easoon and went with MOSO?" And you responded, and you

Kelly - Cross

06:04:01 1 asked me, "How many?"

06:04:02 2 "Yes. And you can estimate. I'm not asking for  
06:04:04 3 a specific."

06:04:06 4 And your answer in 66, "I honestly, you know  
06:04:10 5 somewhere around ten" --

06:04:12 6 A. I said --

06:04:13 7 Q. -- "north or south of it."

06:04:15 8 A. Let's see. I honestly, you know, somewhere around  
06:04:18 9 ten, north or south of it. So three is definitely -- four  
06:04:22 10 or five is south of ten.

06:04:23 11 Q. And so is a hundred. That would be north of ten,  
06:04:26 12 wouldn't it?

06:04:26 13 A. Yeah. You told me to estimate. You said you can  
06:04:28 14 estimate, so I estimated at the time.

06:04:30 15 Q. Okay. And then you estimated again today, and you  
06:04:33 16 said it was just three or four. But when I asked you during  
06:04:36 17 your deposition, you said around ten.

06:04:39 18 A. Okay. So after further study, I found it's been  
06:04:42 19 less.

06:04:44 20 Q. You did further study?

06:04:46 21 A. Well, I mean, I know my customer base.

06:04:48 22 Q. Okay. But so if you did further study, then why  
06:04:52 23 today did you say three or four? Why didn't you have an  
06:04:55 24 exact number since you did further study?

06:04:57 25 A. I don't know.

Kelly - Cross

06:05:00 1 MR. HOOPES: I have no further questions, Your  
06:05:02 2 Honor.

06:05:02 3 THE COURT: All right. Mr. Kelly, one thing  
06:05:06 4 that's mystifying to me, and I'm just trying to figure out  
06:05:09 5 whether there was an answer here, during the time when you  
06:05:12 6 were working at Easoon, did you have a written employment  
06:05:22 7 agreement, consulting agreement, or something else, or was  
06:05:26 8 it all oral?

06:05:27 9 THE WITNESS: It was mostly oral. The agreement  
06:05:29 10 that they refer to, I believe expired, and most of our  
06:05:32 11 dealings were oral.

06:05:33 12 I mean, may I speak freely, Your Honor?

06:05:36 13 THE COURT: Well, you can speak. Freely, I'll  
06:05:38 14 be the judge of that.

06:05:39 15 THE WITNESS: Well, for instance, the example of  
06:05:42 16 me needing to clear items to make money outside of the world  
06:05:46 17 is not true. I was an independent representative with GRK  
06:05:49 18 Fasteners.

06:05:49 19 THE COURT: Well, so that was the other thing I  
06:05:52 20 wanted to ask you about was: How were you getting paid  
06:05:58 21 during those four years? Did you get a set amount per  
06:06:01 22 month?

06:06:01 23 THE WITNESS: Yes.

06:06:02 24 THE COURT: Okay. And did that set amount a  
06:06:06 25 month have anything withheld from it?

Kelly - Redirect

06:06:08 1 THE WITNESS: No, sir.

06:06:09 2 THE COURT: Okay. So when you say you're an  
06:06:12 3 independent contractor, you kind of mean it in taxes sort  
06:06:16 4 of?

06:06:18 5 THE WITNESS: 1099, yes, sir.

06:06:25 6 THE COURT: And basically your expenses for  
06:06:28 7 travel while you worked for Easoon, did you get reimbursed  
06:06:37 8 for that by Easoon, or was that part of what you paid out of  
06:06:39 9 whatever?

06:06:40 10 THE WITNESS: Easoon paid the expenses.

06:06:52 11 THE COURT: Okay. Thank you.

06:06:52 12 THE WITNESS: You're welcome.

06:06:54 13 THE COURT: All right. Any further questions,  
06:06:56 14 Ms. Gentry?

06:06:56 15 MS. GENTRY: I just have two quick questions.

06:06:58 16 REDIRECT EXAMINATION

06:06:58 17 BY MS. GENTRY:

06:07:00 18 Q. Mr. Kelly, can MOSO NA sustain itself by selling the  
06:07:05 19 other product other than the Bamboo X-Treme?

06:07:08 20 A. No, especially not after reputational harm.

06:07:13 21 Q. And if you were to do percentage-wise, how much  
06:07:19 22 percent of MOSO NA sales constitutes that other product?

06:07:26 23 A. It would be less than three percent.

06:07:29 24 Q. And how many percent -- what's the percentage of  
06:07:31 25 sales that has gone to Canada this year of the MOSO Bamboo

Kelly - Redirect

06:07:35 1 X-Treme product?

06:07:36 2 A. Zero.

06:07:37 3 Q. And can MOSO NA sustain itself by selling product  
06:07:42 4 to -- MOSO Bamboo X-Treme to Canada?

06:07:45 5 A. No, not with the market size and limitations to  
06:07:48 6 Canada.

06:07:48 7 MS. GENTRY: Thank you. Nothing further, Your  
06:07:51 8 Honor.

06:07:51 9 THE COURT: Thank you.

06:07:55 10 MR. HOOPES: Quickly, Your Honor?

06:07:56 11 THE COURT: Yes.

06:07:57 12 MR. HOOPES: First, I just want to move to admit  
06:07:59 13 the exhibits that were tendered.

06:08:01 14 MS. GENTRY: Your Honor, we're objecting to  
06:08:04 15 Mr. Hoopes admitting the entire deposition transcript.

06:08:06 16 THE COURT: Well, actually, I'm sympathetic to  
06:08:09 17 that objection. You know, the things that you actually used  
06:08:19 18 with him, which was his declaration, I have no problem with  
06:08:23 19 that. But just, you know, here's the deposition and here's  
06:08:31 20 however many exhibits went with the deposition, yeah, I'm  
06:08:37 21 not going to let that in.

06:08:38 22 MR. HOOPES: It's attached to our reply brief  
06:08:40 23 any way, Your Honor.

06:08:41 24 THE COURT: Okay. Well, then it's in, but it's  
06:08:42 25 not coming in today.

Kelly - Recross

06:08:44 1 MR. HOOPES: That's fine.

06:08:44 2 (Plaintiff's Exhibit No. 10 was admitted into  
06:08:45 3 evidence.)

06:08:45 4 THE COURT: Okay. All right. Is that all?

06:08:47 5 MR. HOOPES: A quick question.

06:08:47 6 RECROSS-EXAMINATION

06:08:50 7 BY MR. HOOPES:

06:08:50 8 Q. MOSO North America is not -- you're saying there's no  
06:08:54 9 sales this year going out to Canada; correct?

06:08:56 10 A. Correct.

06:08:57 11 Q. Is MOSO International B.V. selling product, not  
06:09:00 12 through North America, but directly up to customers in  
06:09:03 13 Canada?

06:09:03 14 A. Not that I'm aware of.

06:09:05 15 Q. Do you know if they are?

06:09:07 16 A. I don't believe so, no. They're in our territory, so  
06:09:11 17 no.

06:09:12 18 Q. Are there bills of lading? Are there products that  
06:09:15 19 have been ordered? Do you have any POs that have been sent?

06:09:15 20 A. No.

06:09:18 21 Q. So there's just no business absolutely in Canada?

06:09:20 22 A. No. I have no business in Canada.

06:09:23 23 Q. Is there anything that would prevent you from going  
06:09:26 24 and obtaining the business?

06:09:27 25 A. No.

Kelly - Recross

06:09:28 1 Q. And why in January 2019, when you were being deposed,  
06:09:34 2 did you say 40 percent? How did it go from 40 percent down  
06:09:39 3 to zero in six months?

06:09:40 4 A. It went on my 2018 sales which I just closed, and  
06:09:44 5 that was the knowledge that I had at the time. Now, we're  
06:09:47 6 six months into 2019, and the information is different.

06:09:50 7 Q. Okay. So from last year to this year, how did you go  
06:09:53 8 from 40 percent of all of MOSO North American sales and  
06:09:57 9 revenue coming in from Canada down to zero?

06:10:00 10 A. It's a really good question. Bad weather, I know,  
06:10:04 11 has been part of our problem. But other than that, they  
06:10:07 12 over ordered last year. I'm not sure.

06:10:11 13 Q. Do you have an expectation that maybe if the weather  
06:10:13 14 gets better or if they --

06:10:15 15 A. I hope.

06:10:16 16 Q. -- run out of product, then they'll sell to MOSO  
06:10:19 17 North America again?

06:10:20 18 A. I hope.

06:10:21 19 Q. And was this a customer that you took from Easoon?

06:10:23 20 A. No.

06:10:25 21 Q. Was this the customer up in Toronto?

06:10:27 22 A. Yes.

06:10:28 23 Q. Was this the customer that you visited on May 31st to  
06:10:31 24 June 2nd?

06:10:32 25 A. Yes.

06:10:32 1 Q. And was this the customer that, immediately after you  
06:10:35 2 resigned from Easoon, that you went with Mr. Veltman from  
06:10:39 3 MOSO, and that was your first step to go meet with this  
06:10:42 4 customer up in Toronto?

06:10:44 5 A. Yes, still as an Easoon customer.

06:10:47 6 MR. HOOPES: I have no further questions, Your  
06:10:48 7 Honor.

06:10:48 8 THE COURT: All right. Mr. Kelly, you may step  
06:10:50 9 down. Watch your step.

06:10:51 10 THE WITNESS: Leave everything here; correct?

06:10:52 11 THE COURT: Leave everything there. Okay.

06:11:02 12 So we've heard the witnesses, the fact witnesses  
06:11:04 13 who appeared. So I guess just in terms of scheduling  
06:11:15 14 things, Mr. O'Rourke and I guess, Mr. Pasternak, how long do  
06:11:25 15 you think it will take to finish up getting the expert  
06:11:39 16 discovery complete?

06:11:44 17 MR. O'ROURKE: We would -- Mr. Pasternak and I  
06:11:46 18 talked during the intermission. We think we have to have a  
06:11:49 19 meet and confer about what we're going to do.

06:11:51 20 THE COURT: Okay. All right. Well, that's fair  
06:11:53 21 enough.

06:11:54 22 MR. O'ROURKE: How would you like us to handle  
06:11:55 23 that? Would you like us to get back to you in a certain  
06:11:57 24 amount of time?

06:11:58 25 THE COURT: Well, I would prefer that you get

06:12:06 1 back to me. I'm not going to set a particular amount of  
06:12:08 2 time. You know, generally if I don't hear from you, then  
06:12:13 3 I'm assuming things are going good.

06:12:17 4 The reason I was asking you was I was trying to  
06:12:19 5 figure out when a date might be to resume this hearing, but  
06:12:28 6 trying to pick a date until you figure out when you're going  
06:12:31 7 to be ready for it seems like an unproductive exercise. So  
06:12:37 8 why don't you just report when you've met and conferred and  
06:12:44 9 think that you have this hopefully resolved.

06:12:47 10 Okay?

06:12:48 11 MR. O'ROURKE: Yes, Your Honor.

06:12:49 12 THE COURT: Okay. And then the other question I  
06:12:51 13 had was whether, you know, when you think about a  
06:12:54 14 preliminary injunction, you have probability of success on  
06:12:59 15 the merits. To me, that's what the expert testimony is  
06:13:02 16 about.

06:13:03 17 The other three preliminary injunction factors,  
06:13:07 18 have I now basically got all the information that I'm ever  
06:13:10 19 going to get on those three?

06:13:12 20 MR. O'ROURKE: I believe so, yes. From  
06:13:20 21 plaintiffs, yes.

06:13:21 22 MR. PASTERNAK: Other than argument about it.

06:13:23 23 MR. O'ROURKE: Yes, argument.

06:13:24 24 THE COURT: Well, okay. Well, so if I need  
06:13:32 25 argument about it, I'll have it when we have the expert

06:13:35 1 hearing, but I kind of wanted to think about -- having  
06:13:41 2 three-quarters of what I need here, I just wanted to know  
06:13:45 3 that I, in fact, have those three-quarters.

06:13:47 4 Okay. Anything else today?

06:13:50 5 MR. PASTERNAK: Your Honor, I had a question.  
06:13:52 6 As you know, we had submitted a supplemental expert report.

06:13:55 7 Would you like us to withdraw it and put a new  
06:13:59 8 one in that we're going to be doing or just leave it out  
06:14:01 9 there?

06:14:02 10 THE COURT: Well, I have no problem with you  
06:14:07 11 just leaving it out there because right now it's not hurting  
06:14:11 12 anybody, or harming anyone, or bothering anyone, at least  
06:14:14 13 not me. So when you figure out the meet and confer, and  
06:14:21 14 what you're going to do, and all that stuff, if there needs  
06:14:23 15 to be cleanup about this or that, you can clean it up. But  
06:14:27 16 right now, it seems to me that there's no particular reason  
06:14:30 17 to worry about it.

06:14:31 18 MR. O'ROURKE: I mean, Your Honor --

06:14:32 19 MR. PASTERNAK: Thanks, Your Honor.

06:14:32 20 MR. O'ROURKE: -- in all fairness, I mean, the  
06:14:34 21 issue is that, in our view, changing theories and adding new  
06:14:38 22 theories to what was originally in the record, that's why I  
06:14:41 23 started the hearing asking you how we're going to handle  
06:14:45 24 Mr. Bock. So essentially it's almost a do-over from our  
06:14:48 25 standpoint with our experts. But I mean, if you want us to

06:14:51 1 do it, we're able to do it.

06:14:53 2 THE COURT: Well, I'm not going to enjoin  
06:14:56 3 somebody from participating in the market based on, you  
06:15:05 4 know, the fact that they submitted a report before I did a  
06:15:08 5 claim construction. And so if it needs to be done over, it  
06:15:13 6 needs to be done over. It's going to need to be done over  
06:15:16 7 anyhow.

06:15:17 8 You know, I don't know whether it needs to be  
06:15:19 9 done over or not, but that's all good stuff for you to meet  
06:15:22 10 and confer about and hopefully resolve.

06:15:25 11 MR. O'ROURKE: Okay. Thank you, Your Honor.

06:15:27 12 THE COURT: Okay? All right.

06:15:31 13 Well, thank you very much. Again, I'm sorry I  
06:15:39 14 couldn't have done this earlier, but in any event, thank you  
06:15:42 15 very much.

06:15:43 16 We'll be in recess.

06:15:44 17 THE CLERK: All rise.

18 (Court was recessed at 6:15 p.m.)

19 I hereby certify that the foregoing is a true  
20 and accurate transcript from my stenographic notes in the  
21 proceeding. /s/ Heather M. Triozzi  
Official Merit Reporter  
U.S. District Court

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